

FILED
U.S. DISTRICT COURT

2006 SEP 19 P 2:27

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

TROY MILLER,

Plaintiff,

v.

SAIA MOTOR FREIGHT LINE, INC.,

Defendant.


SCHEDULING ORDER

Case No. 1:05CV00052 JTG
Judge J. Thomas Greene

This matter comes before the Court to schedule remaining due dates for the completion of all discovery and set a pretrial conference. Upon consideration of the representations by counsel for both parties at the status and scheduling conference held by the Court on September 13, 2006, and the circumstances of this case, the Court hereby orders as follows: (1) the Plaintiff shall, pursuant to Rule 26(a)(2) of the Federal Rules of Civil Procedure, disclose and serve reports from experts retained or specially employed in this matter on or before September 22, 2006, or as the parties may otherwise agree; (2) the Defendant may take the deposition of any expert so disclosed by the Plaintiff on or before October 22, 2006, or as the parties may otherwise agree; (3) the Defendant shall, pursuant to Rule 26(a)(2), disclose and serve reports from rebuttal experts retained or specially employed in this matter, if any, on or before October 22, 2006, or as the parties may otherwise agree; (4) the Plaintiff may take the deposition of any expert so disclosed by the Defendant, if any, on or before November 20, 2006, or as the parties may otherwise agree; (5) a stipulated pretrial order shall

be filed with the Court on or before November 30, 2006; and (6) counsel for the parties shall attend a pretrial conference before the Court to be held on December 7, 2006 at 10:00 a.m.

IT IS SO ORDERED this 1st day of September 2006.


J. THOMAS GREENE
UNITED STATES DISTRICT JUDGE

APPROVED:

/s/ Gregory W. Stevens
Gregory W. Stevens
Attorney for Plaintiff

CHRISTENSEN & JENSEN
By: /s/ Ruth A. Shapiro
Ruth A. Shapiro
Attorneys for Defendant

FILED
U.S. DISTRICT COURT

2006 SEP 19 A 10: 04

CLERK OF COURT

CLERK OF COURT

BENSON L. HATHAWAY, JR. (Bar No. 4219)
STEPHEN W. GEARY (Bar No. 9635)
CHRISTOPHER S. HILL (Bar No. 9931)
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1800 Eagle Gate Tower
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Telephone: (801) 328-3600
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Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

ROBERTA HOFFMAN,

Plaintiff,

v.

JOHNNY W. McCOY, SMITHFIELD CITY,

Defendants.

**ORDER ON DEFENDANTS' MOTION IN
LIMINE TO EXCLUDE TESTIMONY OF
PLAINTIFF'S EXPERTS MICHAEL D.
LYMAN, PH.D. AND LIONEL E. WEEKS,
M.D.**

Case No. 1:05CV00072 DB

Judge Dee Benson

Defendants' Motion in Limine to Exclude Testimony of Plaintiff's Experts Michael D. Lyman, Ph.D. and Lionel E. Weeks, M.D. came on for hearing before the above-entitled Court on Tuesday, August 29, 2006. Plaintiff was present and represented by counsel Melvin A. Cook. Defendants were present and represented by counsel Benson L. Hathaway, Jr. and Christopher S. Hill. The Court, having reviewed the pleadings and papers on file, having heard the arguments of counsel on Defendants' motion in limine, being fully advised in the premises, and now for good cause appearing, hereby enters the following:

FINDINGS

1. The test under Rule 702 for whether the offered testimony is admissible is whether or not the evidence will assist the trier of fact.

2. Dr. Weeks was not present at the time of the incident between plaintiff and defendant Chief McCoy, and has no personal knowledge regarding causation of the injury.

3. Any causation testimony of Dr. Weeks would be based upon hearsay statements of third persons. Dr. Weeks cannot base an admissible opinion on hearsay unless he and other like experts rely on this material in their area of expertise. Dr. Weeks is not a judge, jury, historian, accident reconstructionist, or experienced in any such area that requires reliance on such material.

4. There is no admission by defendants that any particular police technique was employed by Chief McCoy.

5. Even plaintiff's expert identifies that the supposed technique alleged to have been employed was done so in an abbreviated fashion.

6. The offered testimonies of Dr. Lyman and Dr. Weeks would not assist the trier of fact. In fact, the intended testimony would more likely confuse the jury.

7. The jury should hear testimony from Ms. Hoffman, Chief McCoy, and any eyewitnesses.

8. The jury should then be instructed by the Court regarding the appropriate legal standard.

9. The jury can then sort out and decide what happened, and whether the actions of Chief McCoy were reasonable or unreasonable.

10. If material is raised at trial where a jury might be assisted by expert testimony, such as the implementation of specific police maneuvers, in particular, the wrist lock, the Court might be inclined to allow Dr. Lyman to respond to such testimony and help the jury understand it.

Based on these findings, the Court enters the following:


ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Defendants' motion in limine with respect to Dr. Weeks is granted.
2. Dr. Weeks can testify to fact on which he has personal knowledge, but cannot testify as to causation of plaintiff's injuries.
3. Defendants' motion in limine with respect to Dr. Lyman is granted without prejudice.

DATED this 18th day of September, 2006.

BY THE COURT

By: 
The Honorable Dee Benson
United States District Court Judge

Approved as to form:

MARTIN, NELSON, COOK & TAYLOR

By: /s/Melvin A. Cook
MELVIN A. COOK
Attorney for Plaintiff
Original Signature in Defendants' Attorney's Files

UNITED STATES DISTRICT COURT

Northern Division

District of

Utah

UNITED STATES OF AMERICA

V.

Abel Rodriguez

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX106CR000044-001

USM Number: 79586-081

Viviana Ramirez, FPD

Defendant's Attorney

FILED
U.S. DISTRICT COURT

2006 SEP 18 P 2:13

DISTRICT OF UTAH

DEPUTY CLERK

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 USC Sec. 1326	Re-entry of Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/14/2006

Date of Imposition of Judgment

David Sam

Signature of Judge

Hon. David Sam

Name of Judge

U.S. District Judge

Title of Judge

September 18, 2006

Date

DEFENDANT: Abel Rodriguez
CASE NUMBER: DUTX106CR000044-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

10 months.

☒ The court makes the following recommendations to the Bureau of Prisons:

The court recommends defendant be placed in the Weber County Jail.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Abel Rodriguez
CASE NUMBER: DUTX106CR000044-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

12 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Abel Rodriguez
CASE NUMBER: DUTX106CR000044-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally re-enter the United States. If the defendant returns to the United States during the period of supervision, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: Abel Rodriguez
CASE NUMBER: DUTX106CR000044-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ 0.00	\$ 0.00	
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Abel Rodriguez
CASE NUMBER: DUTX106CR000044-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☐ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☒ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:

Special Assessment Fee of \$100.00 is due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. STACY LYNN HARWOOD, Defendant.	ORDER GRANTING DEFENDANT'S MOTION TO CONTINUE TRIAL AND EXCLUDING TIME Case No. 1:06-CR-64 TS
---------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------


Defendant moves to continue trial because he is undergoing testing and treatment. The Court finds that to deny the Motion would deny Defendant's counsel the reasonable time necessary for effective preparation for trial taking into account due diligence because the testing is required for effective trial preparation. The Court further finds that there have been no previous continuances in this case and the ends of justice served by granting a continuance outweigh the best interests of the public and the defendant in a speedy trial. It is therefore

ORDERED that Defendant's Motion to Continue Jury Trial (Docket No. 11) is GRANTED and the jury trial set to begin on October 23, 2006, is VACATED. It is further

ORDERED that pursuant to 18 U.S.C. § 3161(h)(8), the time from October 23, 2006, through the date of the new trial is excluded from in computing the time within which trial shall commence under the Speedy Trial Act.

DATED September 20, 2006.

BY THE COURT:



TED STEWART
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH CENTRAL DIVISION

ASHLEY D. MOORE, Plaintiff, vs. JO ANNE B. BARNHART, Commissioner of Social Security, Defendant.	SCHEDULING ORDER AND NOTICE OF HEARING Case No. 2:06-CV-618 TS District Judge Ted Stewart
---------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------

In order to facilitate the disposition of this case by the Court,

IT IS ORDERED that, on or before the following dates, the parties shall file and serve briefs complying with the requirements set forth below.

PLAINTIFF: October 30, 2006.

COMMISSIONER: December 4, 2006.

PLAINTIFF'S OPTIONAL REPLY: (if any): January 8, 2007.

If this briefing schedule creates any special hardship a party should make a motion immediately. Extensions of time beyond these generous allowances will require a clear showing of good cause.

FORM OF BRIEFS: Opening and responding briefs shall not exceed fifteen pages exclusive of the statement of facts. Reply briefs shall not exceed ten pages. The text of the briefs, including footnotes, must be in a 12-point font size.

1. Plaintiff's Brief

(a) Statement of the Case

The plaintiff shall briefly outline the course of the proceedings and the disposition at the administrative level and set forth a brief statement of pertinent facts. The statement of facts shall include a summary of the physical and mental impairments upon which the allegation of disability is based, and a brief outline of pertinent factual, medical, and vocational evidence. Each statement of fact shall be supported by citation to the page of the transcript where the evidence may be found. Plaintiff's statement of facts should not exceed eight pages in length.

(b) Statement of Grounds for Reversal or Remand

The plaintiff's brief shall contain a statement of the issues, and an argument in support of each issue asserted. The argument shall identify the findings which the plaintiff contends are not supported by substantial evidence or the legal errors committed by the commissioner with citations to the pertinent transcript pages and pertinent cases, rulings, and regulations.

2. Commissioner's Brief

The Commissioner's brief may include a statement of facts if the Commissioner disagrees with the facts as stated by the plaintiff. The Commissioner's statement of facts shall not exceed eight pages in length. The facts and argument submitted by the Commissioner shall cite to the transcript page containing the evidence upon which the Commissioner relies. The Commissioner shall specifically address each of the arguments

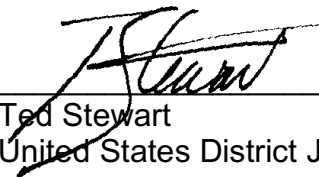
made by the plaintiff in the same order they were raised in the plaintiff's brief. The Commissioner's response shall not address matters not put at issue by the plaintiff.

ORAL ARGUMENT: The Court will have already reviewed the file, pleadings, and administrative record prior to the hearing. The court will hear argument of counsel and intends to rule at the close of the hearing. Hearing is mandatory and the hearing may be moved only upon a showing of good cause. Counsel for the prevailing party may be required to draft a short order reflecting the court's reasons for finding in the party's favor. It is further

ORDERED that hearing is set to begin on January 30, 2007, at 3:00 p.m.

September 19, 2006.

BY THE COURT:



Ted Stewart
United States District Judge

UNITED STATES DISTRICT COURT

Central Division

District of

Utah

UNITED STATES OF AMERICA 2006 SEP 19 P JUDGMENT IN A CRIMINAL CASE

V.

James Thompson

Case Number: DUTX202CR000787-003

USM Number: 10508-081

Scott Williams, Esq.

Defendant's Attorney

THE DEFENDANT:

- ☐ pleaded guilty to count(s) _____
- ☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.
- ☒ was found guilty on count(s) I & VIII of superseding indictment
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC Sec 371	Conspiracy		I
26 USC Sec 7212(a)	Attempts to Interfere with Administration of Internal Revenue		
	Laws		VIII

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) _____
- ☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/13/2006

Date of Imposition of Judgment

Signature of Judge

Dale A. Kimball

Name of Judge

U.S. District Judge

Title of Judge

Date

September 19, 2006

DEFENDANT: James Thompson
CASE NUMBER: DUTX202CR000787-003

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

12 months and one day

☒ The court makes the following recommendations to the Bureau of Prisons:

The court recommends defendant be placed in a facility in Safford, Arizona.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 2 p.m. on 11/13/2006.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: James Thompson
CASE NUMBER: DUTX202CR000787-003

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

24 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: James Thompson

CASE NUMBER: DUTX202CR000787-003

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall maintain full-time verifiable employment or participate in academic or vocational development throughout the term of supervision as deemed appropriate by the probation office.
2. The defendant is to inform any employer or prospective employer of his current conviction and supervision status.
3. The defendant shall provide the probation office access to all requested financial information.

DEFENDANT: James Thompson
CASE NUMBER: DUTX202CR000787-003

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 200.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ <u>0.00</u>	\$ <u>0.00</u>
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: James Thompson
CASE NUMBER: DUTX202CR000787-003

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 200.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
Special Assessment Fee of \$200 is due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

UNITED STATES OF AMERICA

Plaintiff,

vs.

Sheldon Panter

Defendant

FILED
U.S. DISTRICT COURT

2006 SEP 19 P 1:02

PRO SE MOTION

FOR EARLY TERMINATION OF PROBATION

FILED
U.S. DISTRICT COURT

2006 FEB 14 P 5:41

DISTRICT OF UTAH

BY: DEPUTY CLERK

2:03-CR-00191-001

ORDER

On August 19, 2003 defendant Sheldon Panter appeared before the Honorable Dale A Kimball for imposition of sentence. The defendant was sentenced to a five (5) year term of probation. Pursuant to Title 18 United States Code, Section 3564(e)(1), The Court, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), and (a)(6), terminate a term of probation and discharge the defendant released at any time after the expiration of one year of probation, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of supervised release, if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice.

DATED this 10th day of Feb., 2006

BY THE DEFENDANT:

Sheldon Panter

cc: Gregory Diamond, Assistant United States Attorney
Wyatt M. Stanworth, United States Probation Officer

SO ORDERED

Dale A. Kimball
DALE A. KIMBALL
United States District Judge

Date September 19 2008

SEP 19 2006

UNITED STATES DISTRICT COURT

MARKUS B. ZIMMER, CLERK
BY DEPUTY CLERK

Central

District of

Utah

UNITED STATES OF AMERICA

V.

Tevita Maile Niu

JUDGMENT IN A CRIMINAL CASE

(For Revocation of Probation or Supervised Release)

Case Number: DUTX203CR000657-001

USM Number: 10956-081

Julie George

Defendant's Attorney

THE DEFENDANT:

☒ admitted guilt to violation of condition(s) 1 - 5 of the petition of the term of supervision.

☐ was found in violation of condition(s) _____ after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
Allegation #1	Defendant failed to maintain employment	
Allegation #2	Defendant failed to notify the USPO of a change in his employment	

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has not violated condition(s) _____ and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Defendant's Soc. Sec. No.: 999-99-9999

9/14/2006

Defendant's Date of Birth: 1980

Date of Imposition of Judgment

Defendant's Residence Address:

West Valley City, Ut 84120

Signature of Judge

Paul Cassell

US District Judge

Name of Judge

Title of Judge

Date

9-15-06

Defendant's Mailing Address:

same

DEFENDANT: Tevita Maile Niu
CASE NUMBER: DUTX203CR000657-001

ADDITIONAL VIOLATIONS

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Concluded</u>
Allegation #3	Defendant failed to submit a Monthly Supervision Report within the first five days of July of 2006	7/1/2006
Allegation #4	Defendant failed to submit to drug/alcohol testing, as directed by the USPO	7/4/2006 7/15/2006 7/19/2006 7/28/2006
Allegation #5	Defendant has failed to maintain a registered residence with the USPO	

DEFENDANT: Tevita Maile Niu
CASE NUMBER: DUTX203CR000657-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :

8 months with credit for time served

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Tevita Maile Niu
CASE NUMBER: DUTX203CR000657-001

Judgment—Page 4 of 5

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
24 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Tevita Maile Niu
CASE NUMBER: DUTX203CR000657-001

Judgment—Page 5 of 5

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall reside in a community treatment center for a period of 90 days with work release, educational release, medical release, release to attend religious services, release to participate in treatment, or other approved leave as deemed appropriate by the probation office or community treatment center.
2. The defendant will submit to drug/alcohol testing, as directed by the probation office.
3. The defendant shall participate in drug and/or alcohol abuse treatment under a copayment plan as directed by the probation office and shall not possess or consume alcohol during the course of treatment, nor frequent businesses where alcohol is the chief item of order.
4. The defendant shall not be a member of a gang nor associate with any known gang member.
5. The defendant shall not possess materials which give evidence of gang involvement or activity.
6. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

Frank D. Mylar (5116)
MYLAR LAW, P.C.
6925 Union Park Center, Suite 600
Salt Lake City, Utah 84047-4141
Phone: (801) 858-0700
FAX: (801) 858-0701
Mylar-Law@comcast.net

FILED
U.S. DISTRICT COURT
2006 SEP 19 A 11:11
CLERK

Attorney for Plaintiffs Donald L. Rivera and Dan Trujillo

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DONALD L. RIVERA, et al.,

Plaintiffs,

v.

**SALT LAKE COMMUNITY
COLLEGE, et al.,**

Defendants.

**ORDER GRANTING PLAINTIFFS,
DONALD L. RIVERA AND DAN
TRUJILLO'S UNOPPOSED MOTION
TO EXTEND TIME TO FILE REPLY
MEMORANDUM IN SUPPORT OF
MOTION TO ALTER OR AMEND**

Judge Dee Benson
Magistrate Judge Brooke C. Wells

Case No. 2:03-cv-00764 DB (Lead Case)

Based upon Plaintiffs Rivera's and Trujillo's Unopposed Motion for Enlargement of Time, pursuant to F.R.C.P. 6(b) and for good cause appearing, the motion is granted. Plaintiffs, Donald L. Rivera and Dan Trujillo, are granted an extension of time in which to file their reply memorandum in support of their Motion to Alter Rule 54(b) Judgment or Amend and Request for Hearing to October 2, 2006.

DATED this 14th day of September 2006.

Dee Benson
DEE BENSON
United States District Judge

Derek A. Coulter, #9022
Melinda Bell, #10633
The Law Office of Derek A. Coulter, P.C.
11576 South State St, Suite 503
Draper, Utah 84020
Telephone: (801) 501-0321
Fax: (801) 307-0318

FILED
U.S. DISTRICT COURT
2006 SEP 20 A 10:40
CLERK OF DISTRICT COURT
CLERK

Attorneys for Defendants/Counterclaimants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

DALE K. BARKER CO., PC,

Plaintiff,

vs.

LARRY J. SUMRALL, individually and
DBA NORTH VALLEY FEED and
VALLEY PLAZA, and PATRICIA A.
SUMRALL, and JOHN DOES 1-10,

Defendants.

**ORDER FOR DEFENDANTS'
MOTION FOR PROTECTIVE
ORDER AND PLAINTIFFS'
MOTION TO EXTEND
DISCOVERY**

Civil No. 2:03CV00903

Judge: Dee Benson

Magistrate: Samuel Alba

Plaintiff's MOTION FOR PROTECTIVE ORDER and Defendants' MOTION TO CONTINUE THE PRE-TRIAL TO PERMIT COMPLETION OF PENDING DISCOVERY came before the Hon. Dee Benson on the 14th day of August, 2006. Defendants, Larry J. Sumrall, Patricia A. Sumrall and related entities were represented by Derek A. Coulter; Plaintiff, Dale K. Barker Co., P.C. was represented by Russell A. Cline. The Court having evaluated the information and pleading provided, including oral argument makes the following findings:

1. Plaintiff asserts that he has provided all outstanding discovery as ordered by Judge Samuel Alba from the December 12, 2005 Motion to Compel Order; and that Defendants' should be prevented from conducting any further discovery beyond the discovery deadline, which has passed.
2. Defendants' assert that they have been unable to complete discovery, including deposing several employees of Plaintiff, due to delays in receiving information from Plaintiff. Defendants maintain they had a good faith belief that they were continuing with discovery without a governing case management schedule and there is essential discovery that needs to be completed before the case is ready to present at trial.

IT IS THEREFORE ORDERED:

1. That Plaintiff's Motion For Protective Order is Denied.
2. That Defendants' Motion To Continue The Pre-Trial To Permit Completion of Pending Discovery is Granted as follows:
 - a. The parties are Ordered to communicate and cooperate with each other to complete any remaining discovery, including the depositions of Plaintiff's employees.
 - b. Before filing any dispositive motions, motions to compel, or other motions for relief, the parties should initiate a teleconference with the Court to discuss any dispute that can't be resolved between Counsel.
 - c. All fact discovery and expert discovery should be completed by November 14, 2006.

d. At the conclusion of discovery, the parties may contact the Court's scheduling clerk to request a pre-trial conferences conference from the Court.

e. At this time, no award for attorney's fees and costs is granted.

IT IS SO ORDERED:

DATED this day 19th ^{September} of August, 2006.


BY THE COURT

Approved as to form:

/sig/ Russell A. Cline, Esq.
original signature on file in our office

CERTIFICATE OF MAILING

I certify that on this 30 day of August, 2006, I faxed and mailed a true and correct copy of the foregoing ORDER by U.S. mail, first class, postage prepaid to the following:

Russell A. Cline
CRIPPEN & CLINE L.C.
10 West 100 South, Suite 425
Salt Lake City, Utah 84101
Fax: 801-322-1054

/sig/ Derek A. Coulter, Esq.

Proposed Order Submitted By:

Sarah G. Schwartz, 9921
HOLLAND & HART LLP
60 E. South Temple, Suite 2000
Salt Lake City, Utah 84111-1031
801-595-7800

*Attorneys for Richard D. Clayton, as Receiver for
NuWay Holding, Inc., et al.*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DAVID M. WOLFSON; NUWAY HOLDING,
INC., a Nevada corporation; LEEWARD
CONSULTING GROUP, LLC, a Utah limited
liability company; SUKUMO LIMITED, a
company incorporated in the British Virgin
Islands (a.k.a SUKUMO GROUP, LTD.,
FUJIWARA GROUP, FIRST CHARTERED
CAPITAL CORPORATION, FIRST COLONIAL
TRUST, FIRST CHINA CAPITAL AND
INTERNATIONAL INVESTMENT HOLDING);
MICHAEL SYDNEY NEWMAN (a.k.a
MARCUS WISEMAN); STEM GENETICS,
INC., A Utah corporation; HOWARD H.
ROBERTSON; GINO CARLUCCI; G & G
CAPITAL, LLC, an Arizona and Utah limited
liability company; F10 OIL AND GAS
PROPERTIES, INC.; JON H. MARPLE; MARY
E. BLAKE; JON R. MARPLE; GRATEFUL
INTERNET ASSOCIATES, LLC, a Colorado
limited liability company; DIVERSIFIED
FINANCIAL RESOURCES CORPORATION, a
Delaware corporation; JOHN CHAPMAN;
VALESC HOLDINGS, INC., a New Jersey
corporation; JEREMY D. KRAUS; SAMUEL
COHEN; NCI HOLDINGS, INC., a Nevada
corporation

Defendants.

ORDER APPROVING KANSAS
AGREEMENT AND LIFTING STAY
REGARDING KANSAS ACTION

Civil No. 2:03CV914

Judge Dale A. Kimball

The Court having considered the Receiver's motion to approve agreement and to lift stay regarding Kansas action, the Receiver's memorandum in support thereof, and being otherwise informed,

ORDERS AND FINDS THAT:

1. The agreement between the Receiver and Cross Sales, LLC regarding the Receiver's disputed interest in the property described as Lot 106 except the West 2 1/2 feet thereof, and all of Lot 108, on Douglas Avenue, in the original town, now of City of Wichita, Sedgwick County, Kansas ("Kansas Property") is approved;

2. The agreement between the Receiver and Cross Sales, LLC regarding the Kansas Property is in the best interests of the Receivership estate; and

3. The Amended Order Staying Litigation is lifted with respect to the action filed by Cross Sales, LLC entitled *Cross Sales, LLC v. A-Z, LLC et al.*, Case No. 04CV4867 in the Eighteenth Judicial District Court, Sedgwick County, Kansas, Civil Division and with respect to any sale of the Kansas Property.

DATED this 19th day of September, 2006.



Judge Dale A. Kimball
United States District Court

**In the United States District Court
for the District of Utah, Central Division**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MIGUEL AVALOS-VASQUEZ,

Defendant.

ORDER

Case No. 2:04 CR 708 JTG

Appeal No. 06-4076

This matter is before the Court pursuant to the Tenth Circuit's Order filed August 7, 2006, partially remanding the case for a determination of excusable neglect under Fed. R. App. P. 4(b)4.

The Tenth Circuit has found that the Notice of Appeal was timely filed within the thirty-day extension period, subject to remand to the district court "for the limited purpose of determining whether defendant can establish excusable neglect or good cause for the untimely filing of his notice of appeal." This Court finds that under the totality of the circumstances applicable to this case, there was excusable neglect.

PROCEDURAL BACKGROUND

Defendant, Miguel Avalos-Vasquez, was sentenced to 120 months imprisonment on January 23, 2006. The Judgment was entered February 9, 2006. A Notice of Appeal or motion for extension of time should have been filed within 10 days after entry of Judgment, which would have been on or before February 24, 2006. Although Mr. Garrett believed that Ms.

Ashdown had electronically filed the Notice of Appeal on February 9, 2006, that was not the case, and after discovery of that defect defendant's Notice of Appeal was filed with the Court on March 22, 2006, within the thirty day extension period.

Status reports were filed by James Garrett on behalf of defendant and the Vernon Stejskal on behalf of the government as directed by the Tenth Circuit, and the Court conducted an evidentiary hearing on August 24, 2006. Mr. Garrett and his secretary, Jackie Ashdown, testified concerning the delay in filing the Notice of Appeal. Mr. Garrett filed a post hearing Memorandum of Points and Authorities concerning Excusable Neglect or Good Cause on September 5, 2006.

FACTUAL BACKGROUND

Based upon the files and records before the Court, including testimony presented at the evidentiary hearing, the Court finds the following facts, as well as established facts as set forth in the analysis of the four factors hereinafter discussed:

On January 23, 2006, Mr. Garrett discussed filing a Notice of Appeal with defendant Avalos-Vasquez and determined to file a Notice of Appeal on defendant behalf.

After sentencing and before the Judgment was filed, Mr. Garrett discussed preparation and filing of the Notice of Appeal with his secretary, Ms. Ashdown. He asked his secretary to file the Notice of Appeal. The Notice of Appeal was prepared by Ms. Ashdown and it was saved on her computer.

The normal procedure at counsel's office at that time for the production of a document were as follows: dictated the pleading; rough draft prepared; edited; and reviewed.

Once a document was ready for submission Counsel would hand write the words, “Final Submit to Court” on the top of the document and give the same to his secretary. Counsel’s secretary would place the electronic signature on the bottom, date the document, complete the certificate of service, and file the document electronically with the Court.

On February 9, 2006, the prepared Notice of Appeal was placed on Mr. Garrett’s desk with a date and electronic signature on it. He placed the words, “Final, Submit to the Court” on the Notice of Appeal and left for the day. When Counsel returned on the 10th, the Notice of Appeal was on his desk, the date of the 9th had been placed on the document, the signature line was complete, and the certificate of service was also complete. Counsel believing the Notice of Appeal had been filed, placed the hard copy of the Notice of Appeal in his file.

Mr. Garrett assumed and was under the mistake of fact that the Notice of Appeal was filed with the Court. Several busy weeks passed before Mr. Garrett asked Ms. Ashdown if they had received any documents from the 10th Circuit Court of Appeals relating to defendant’s appeal. Ms. Ashdown answered in the negative.

On March 21, 2006, counsel checked with the 10th Circuit to question the docket statement package and why it had not been received. The 10th Circuit did not have record of the case. He then called the District Court to see if the Notice of Appeal had been filed. When it was discovered by counsel that the Notice of Appeal had not been filed, he notified Vernon Stejskal, the Assistant United States Attorney involved in this case and also Judge Greene’s chambers. Counsel then immediately filed the Notice of Appeal on March 22, 2006.¹

¹ The Court recognizes that Mr. Garrett has since changed his office procedures. Mr. Garrett and Ms. Ashdown testified that his office now prints the electronic receipt of filing when they electronically file any document with the court. This process with help prevent future filing errors.

ANALYSIS

Rule 4(b)(4) of the Federal Rules of Appellate Procedure states:

Motion for Extension of Time. Upon a finding of excusable neglect or good cause, the district court may – before or after the time has expired, with or without motion and notice – extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).²

The Tenth Circuit has rendered several opinions concerning excusable neglect within the meaning of the aforesaid Rules, including “[a] defendant who filed his notice of appeal within the Rule 4(b) thirty-day extension period may obtain relief by showing excusable neglect notwithstanding his failure to file a motion seeking such relief within that same time frame.” *United States v. Espinosa-Talamantes*, 319 F.3d 1245, 1246 (10th Cir. 2003)(citing *United States v. McMillan*, 106 F3d 322, 324 (10th Cir. 1997)).

“The appropriate remedy in such a situation is to remand the case to the district court so that the court can determine if the requisite [finding] for a thirty-day extension of time can be made.” *Espinosa-Talamantes*, 319 F.3d at 1246 (citing *United States v. Lucas*, 597 F.2d 243, 245-46 (10th Cir. 1979)).

In order for a district court to support a finding of excusable neglect, a court must “tak[e] account of all relevant circumstances surrounding the party’s omission.” *Pioneer*

² “The excusable neglect standard applies in situations in which there is fault; in such situations, the need for an extension is usually occasioned by something within the control of the movant. The good cause standard applies in situations in which there is no fault – excusable or otherwise. In such situations, the need for an extension is usually occasioned by something that is not within the control of the movant.” Fed. R. App. P. 4(b)(4) advisory committee note.

Investment Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 395 (1993).³ A four factor test was then established by the Supreme Court: “The four factors to be considered are: (1) the danger of unfair prejudice to the nonmoving party; (2) the length of delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith.” *United States v. Vogl*, 374 F.3d 976, 981 (10th Cir. 2004)(citing *Pioneer*, 507 U.S. at 395). “Although ‘excusable neglect’ is not strictly limited to omissions caused by circumstances beyond the movant’s control, ‘inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute excusable neglect.’” *Vogl*, 374 F.3d at 981 (citing *Pioneer*, 507 U.S. at 392).

The aforesaid factors will now be discussed as applied to the facts of this case.

A. The danger of unfair prejudice to the nonmoving party.

The Court finds that the government has not been unfairly prejudiced by the defendant’s delay in filing the Notice to Appeal. During the evidentiary hearing to determine excusable neglect, the government did not cross examine the witnesses and did not argue that it was being prejudiced in anyway by they delay. The government’s brief relating to this matter took no position on the merits, and again the government did not argue that it had been unfairly prejudiced by the delay. Accordingly, this factor weighs in favor of defendant.

B. The length of the delay and its potential impact on judicial proceedings

The Court finds that the length of delay in filing the Notice of Appeal has had a minimal impact on judicial proceedings. Mr. Garrett filed the Notice of Appeal within the

³ The Tenth Circuit has found that “the Supreme Court’s construction of ‘excusable neglect’ in *Pioneer* also applies to the term ‘excusable neglect’ as it is used in Federal Rule of Appellate Procudure 4(b)(4).” *United States v. Torres*, 372 F.3d 1159, 1162 (10th Cir. 2004).

possible thirty-day extension time allowed under Rule 4(b)(4) of the Federal Rules of Appellate Procedure. Although defendant's appeal is "on hold" until this Court makes a determination on excusable neglect, the Court finds that the delay has had minimal impact on the judicial proceedings of this matter.

C. The reason for delay, including whether it was within the reasonable control of the movant

The Tenth Circuit has found that the third factor, "fault in the delay[,] remains a very important factor – perhaps the most important single factor – in determining whether neglect is excusable." *United States v. Torres*, 372 F.3d 1159, 1163 (10th Cir. 2004)(citing *City of Chanute v. Williams Natural Gas Co.*, 31 F.3d 1041, 1046 (10th Cir. 1994)). The Court finds that this factor is of particular significance in its determination of excusable neglect. This is so because this situation was within the reasonable control of Mr. Garrett.

Mr. Garrett in good faith believed that the Notice of Appeal was filed by Ms. Ashdown on February 9, 2006, when he found and placed into his file the dated and signed notice which had been placed by his secretary on his desk. Several weeks later, when he found that the Notice of Appeal had not been filed correctly, he immediately tried to correct the error by promptly filing the Notice of Appeal on March 22, 2006.

The Tenth Circuit has decided many cases that involve a determination of excusable neglect from inadvertence, ignorance of the rules, or mistakes construing the rules. However, the Tenth Circuit has not addressed facts that are substantially similar to this case. In this case, Mr. Garrett was fully aware of the rules of appellate procedure and in good faith thought that the Notice of Appeal was properly and timely filed by Ms. Ashdown within ten days

of the Judgment. He was proceeding under an erroneous supposition of fact.

The Ninth and Eleventh Circuits have addressed cases with facts that parallel the facts in this case. The Court finds these cases persuasive. In *Pincay v. Andrews*, 389 F.3d 853 (9th Cir. 2004), the Ninth Circuit found excusable neglect where a paralegal was delegated the task of calendaring the outside date for an appeal and erred when calculating that date under the rules, which caused the Notice of Appeal to be delayed. The Ninth Circuit found that although it is an attorney's responsibility to supervise delegated work under the Rules of Professional Conduct, the "delegation of the task of ascertaining the deadline was not per se inexcusable neglect." *Id.* at 856. The Ninth Circuit relies on the *Pioneer* decision, where the Supreme Court stated that "excusable neglect may extend to inadvertent delays . . . that excusable neglect . . . is a somewhat elastic concept that is not limited strictly to omissions caused by circumstances beyond the control of the movant." *Pioneer*, 507 U.S. at 1496. The case at bar is even more conducive to a finding of excusable neglect because there was no misinterpretation of the rules at all. There was a failure in communication or misunderstanding when Mr. Garrett saw the Notice of Appeal on his desk with a date and signature on it. Under Mr. Garrett's office policy at the time, those two things indicated that the document had been filed with the court.

In *Cheney v. Anchor Glass Container Corp.*, 71 F.3d 848, 850 (11th Cir. 1996), the court followed a similar analysis in determining excusable neglect under a Rule 60(b) motion by citing to the factors used in the *Pioneer* case. In *Cheney*, there was a delayed filing because of a failure in communication between the associate attorney and the lead counsel. The failure in communication occurred because the lead counsel was on vacation when the associate received notice of an arbitration award in which a demand for trial *de novo* needed to be filed within 30

days. The associate did not want to file the demand without consulting the lead counsel, however, the associate left for vacation before the lead counsel returned. The task of notifying lead counsel of this deadline was then delegated to the secretary, who failed to do so. The *Cheney* court found that the “circumstances of error were obviously within counsel’s control, but their noncommunication and resulting inaction amounts only to an ‘omission caused by carelessness.’” *Id.* at 850 (citing *Pioneer*, 507 U.S. at 388). The court concluded that the late filing “was simply an innocent oversight by counsel” and that there was “no bad faith that would warrant forfeiture of [movant’s] right to a full trial.” *Cheney*, 71 F.3d at 850. The Eleventh Circuit found that the neglect of Cheney’s counsel was “excusable.”

Although the Court finds these two cases to be the most factually similar to our case, the Tenth Circuit also found excusable neglect in a case where the party was at fault under the third element. *City of Chanute, Kansas v. Williams Natural Gas Co.*, 31 F.3d 1041, 1046 (10th Cir.1994). In *Williams Natural Gas Co.*, the district court found excusable neglect in a case where the plaintiff had failed to properly specify eight of the nine parties in the caption on the Notice of Appeal. *Id.* at 1044. The Tenth Circuit affirmed the district court, finding that although plaintiff was at fault “under the entire circumstances of the case and looking to the other three *Pioneer* factors, the district court acted within its discretion. We see no danger of prejudice to the [non-moving] party from the delay.” *Id.* at 1046.

Similar to *Cheney*, in this case Mr. Garrett was negligent in his “innocent oversight” of not confirming that the Notice of Appeal was properly filed until several weeks later. The Court finds that his negligence is excusable under the above analysis.

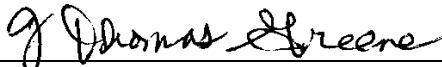
D. Whether the movant acted in good faith

The Court finds that Mr. Garrett was acting in good faith when he assumed that Ms. Ashdown had filed the Notice of Appeal on February 9, 2006. Once Mr. Garrett realized that the Notice was not properly filed, he immediately tried to correct that error by filing the Notice of Appeal on March 22, 2006. The Court finds that Mr. Garrett was not trying to delay the proceedings and was not acting in bad faith, but that Mr. Garrett honestly thought that the Notice was filed properly and that this was an innocent oversight.

Base upon the foregoing analysis, it is hereby

ORDERED, that the extension of time should be GRANTED based upon excusable neglect.

DATED this 20th day of September, 2006.



J. THOMAS GREENE
UNITED STATES DISTRICT JUDGE

2006 SEP 19 A 10:05

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION

DOMINION NUTRITION, INC.,

Plaintiff,

vs.

TOM MYERS, et al.,

Defendants.

ORDER

Case No. 2:04-CV-01089

Judge Dee Benson

Global Nutrifoods, LLC and Tom Myers (collectively "GNF") have moved the Court for an extension of the expert disclosure deadline (See Docket #184). Having reviewed the parties arguments and the relevant law, the Court GRANTS GNF's motion and extends the deadline for expert disclosure to December 15, 2006.

BACKGROUND

Dominion Nutrition ("DNI") and GNF are embroiled in a lawsuit involving claims of trade secret misappropriation. GNF has moved the court for an order extending its deadline for disclosure of expert witness reports until after it has reviewed DNI's production of documents and conducted the depositions of Dr. David Barbano and Dr. Munir Cheryan. Dr. Barbano and Dr. Cheryan are both members of DNI's Technical Advisory Board and GNF alleges that they have been intimately involved in the development and marketing of DNI's microfiltration

process that is the subject of this litigation. DNI admits "it is true that Dr. Cheryan is on the DNI technical advisory board, and likewise true that he has been involved in DNI's process development." See DNI's Mem. in Opp., 3-4. DNI also admits "[a]s with Dr. Cheryan, it is true that Dr. Barbano has been involved with DNI's efforts to develop products." *Id.*, at 5. DNI argues, however, that GNF has not been diligent in filing its expert reports and that it will be prejudiced by having less than ten days before trial to submit a rebuttal report.

ANALYSIS

The Tenth Circuit has identified several factors that a district court should consider when deciding whether to reopen discovery. These factors include

1) whether the trial is imminent, 2) whether the request is opposed, 3) whether the non-moving party would be prejudiced, 4) whether the moving party was diligent in obtaining discovery within the guidelines established by the court, 5) the foreseeability of the need for additional discovery in light of the time allowed for discovery by the district court, and 6) the likelihood that the discovery will lead to relevant evidence.

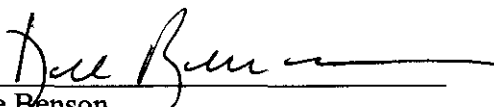
SIL-FLO, Inc. v. SFHC, Inc., 917 F.2d 1507, 1514 (10th Cir. 1990).

In the present case, the balance of the factors favors extending the deadline for expert disclosures. First, the trial is not imminent. The trial date has been moved to March 5, 2007. There is ample time between now and the trial date to accommodate the depositions of Dr. Barbano and Dr. Cheryan. Second, DNI will not be prejudiced by extending the expert discovery deadline so that Dr. Barbano and Dr. Cheryan may be deposed. Because the trial date has been moved from October 2006 to March 2007, DNI will have sufficient time to prepare its rebuttal to GNF's expert report. Finally, the depositions of Dr. Barbano and Dr. Cheryan may lead to relevant evidence. Based on the close association between the doctors and DNI in developing and marketing the microfiltration process, the doctors could provide relevant evidence in their depositions. Because these factors favor extending the expert disclosure deadline, GNF's motion

is hereby GRANTED. The new deadline for expert disclosure deadline is December 15, 2006.

IT IS SO ORDERED.

DATED this 18th day of September 2006.


Dee Benson
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

PRISCILLA CHAVEZ,

Plaintiff,

v.

JAMES POLEATE et al.,

Defendants.

2006 SEP 20 A 10:28
DISTRICT OF UTAH
Case No. 2:04-CV-00704 TC
DEPUTY CLERK

O R D E R

Plaintiff, Priscilla Chavez, an inmate at the Utah State Prison, filed this civil rights suit under 42 U.S.C. § 1983. Plaintiff was granted leave to proceed *in forma pauperis* under 28 U.S.C. § 1915. This case is now before the court on Plaintiff's motion to amend, and on Utah Department of Corrections' (UDOC) motion to quash and motion to dismiss.

Background

Plaintiff filed her original Complaint pro se on December 13, 2004. On February 2, 2005, the court granted Plaintiff's motion for official service of process upon Defendant Poleate. Plaintiff later obtained counsel who filed a motion to amend the Complaint on August 22, 2005, which was granted. Plaintiff's First Amended Complaint added UDOC as a defendant. UDOC moved to quash Plaintiff's first attempt at service of the First Amended Complaint asserting improper service. Plaintiff then properly re-served UDOC, who then filed a motion to dismiss asserting Eleventh Amendment immunity and failure to state a claim.

Plaintiff filed a motion to amend the First Amended Complaint, dismissing UDOC and naming instead Clint Friel, Warden of the Utah State Prison, in his individual capacity.

Analysis

UDOC argues that Plaintiff's motion to further amend the complaint should be denied as untimely and prejudicial. UDOC also argues that further amendment would be futile. The crux of UDOC's argument is that Plaintiff should have named Clint Friel as a defendant in her First Amended Complaint and that allowing her to do so now would prejudice UDOC. To support this argument UDOC cites the Tenth Circuit's statement in *Pallottino v. City of Rio Rancho*, 31 F. 3d 1023, 1027 (10th Circ. 1994), that "[w]here the party seeking amendment knows or should have known of the facts upon which the proposed amendment is based but fails to include them in the original complaint, the motion to amend is subject to denial." Plaintiff contends that *Pallottino* is distinguishable because the movant there sought to add additional claims based on the same facts previously alleged, whereas here Plaintiff's proposed amendment merely seeks to substitute a proper defendant for UDOC. Plaintiff also points out that amending the complaint to name Clint Friel individually would not prejudice UDOC because UDOC would no longer be a party to this case.

Fed. R. Civ. P. 15(a) states that "leave [to amend] shall be

freely given when justice so requires." Given the gravity of Plaintiff's allegations, and the fact that she originally filed her complaint pro se, the court finds that allowing Plaintiff leave to further amend her complaint would be in the interest of justice. In addition, the Court does not see how allowing the proposed amendment would prejudice UDOC. Accordingly, Plaintiff's motion to amend her First Amended Complaint is granted.

Moreover, UDOC's motion to quash and motion to dismiss are now moot because Plaintiff's proposed Second Amended Complaint does not name UDOC as a Defendant. Therefore, the proposed amendment effectively dismisses UDOC from this case.

ORDER

Based on the foregoing, IT IS HEREBY ORDERED that:

- (1) Plaintiff's motion to amend the First Amended Complaint is granted;
- (2) UDOCs' motion to quash is denied as moot; and,
- (3) UDOCs' motion to dismiss is denied as moot.

DATED this 19th day of September, 2006.

BY THE COURT:


TENA CAMPBELL
United States District Judge

Craig G. Adamson (0024)
Eric P. Lee (4870)
Craig A. Hoggan (8202)
Debra Griffiths Handley (8365)
DART ADAMSON & DONOVAN
370 East South Temple, Suite 400
Salt Lake City, UT 84111
Telephone: (801) 521-6383
Facsimile: (801) 355-2513

RECEIVED
SEP 18 2006
OFFICE OF
JUDGE TENA CAMPBELL

FILED
U.S. DISTRICT COURT
2006 SEP 19 P 4:32
DISTRICT OF UTAH
BY: [Signature]

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

---oooOooo---

RICHARDSON VAN LEEUWEN
CONSTRUCTION COMPANY, LLC,

Plaintiff and Counterclaim Defendant,

v.

BOX B, LLC, and SHANNON TRACY,

Defendants and Counterclaimants.

**ORDER OF DISMISSAL OF
PLAINTIFF'S SECOND CAUSE
OF ACTION**

Civil No: 2:04cv01192 TC

Judge Tena Campbell

---oooOooo---

Pursuant to the parties' Stipulation and Motion for Order of Dismissal, and good cause appearing, it is hereby ordered that plaintiff's Second Cause of Action re: Defamation and Slander Per Se is hereby dismissed.

DATED this 19 day of September, 2006.

BY THE COURT


HONORABLE TENA CAMPBELL
U.S. DISTRICT JUDGE

APPROVED AS TO FORM

DATED this 15th day of September, 2006.

DART, ADAMSON & DONOVAN

s/ Debra Griffiths Handley
DEBRA GRIFFITHS HANDLEY
Attorneys for Plaintiff

DATED this 15th day of September, 2006.

s/ Drew Briney
L. ANDREW BRINEY
Attorney for Defendants

UNITED STATES DISTRICT COURT

CENTRAL DIVISION

District of

FILED
U.S. DISTRICT COURT
UTAH

UNITED STATES OF AMERICA

V.

Sharon Oliver

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX 205CR000028-007

USM Number: 12308-081

Mark Gregersen

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 2 of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. § 846	Conspiracy to Distribute Heroin		2

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) 3 of the Indictment ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/13/2006

Date of Imposition of Judgment

Signature of Judge

Ted Stewart

Name of Judge

U. S. District Judge

Title of Judge

9/14/2006

Date

DEFENDANT: Sharon Oliver
CASE NUMBER: DUTX 205CR000028 - ~~007~~

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

80 months

☒ The court makes the following recommendations to the Bureau of Prisons:

1. Court requests that defendant NOT be housed in Dublin, CA facility.
2. Participation in RDAP program.
3. Incarceration in Bryan, TX (1st), or Victorville, CA (2nd)

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Sharon Oliver

CASE NUMBER: DUTX 205CR000028 - 007

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:

60 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Sharon Oliver

CASE NUMBER: DUTX 205CR000028 - 007

ADDITIONAL SUPERVISED RELEASE TERMS

- 1) The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use or excessive and/or illegal consumption of alcohol such as alcohol-related criminal or traffic offenses, the defendant shall participate in drug and/or alcohol abuse treatment under a copayment plan as directed by the United States Probation Office and shall not possess or consume alcohol during the course of treatment, nor frequent businesses where alcohol is the chief item of order.
- 2) The defendant shall not use or possess alcohol, nor frequent businesses where alcohol is the chief item of order.
- 3) The defendant shall submit her person, residence, office, or vehicle to a search, conducted by the United States Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

CASE NUMBER: DUTX 205CR000028 - 007

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Sharon Oliver
CASE NUMBER: DUTX 205CR000028-007

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10
are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

United States District Court
for the District of Utah

**Request and Order for Modifying Conditions or Term of Supervision
With Consent of the Offender**

(Waiver of hearing attached)

2006 SEP 19 P 3:43

Name of Offender: **Brandon Chapman**

Docket Number: **2:05-cr-00224-001 PGC**

Name of Sentencing Judicial Officer: **Honorable Paul Cassell**

Date of Original Sentence: **September 14, 2005**

Original Offense: **Conveying a Bomb Threat by Telephone**

Original Sentence: **12 Months 1 Day BOP Custody/36 Months Supervised Release**

Type of Supervision: **Supervised Release**

Supervision to Begin: **July 28, 2006**

PETITIONING THE COURT

☒ To modify the conditions of supervision as follows:

The defendant shall reside in a community treatment center for a period of up to 120 days, with work release, educational release, medical release, release to attend religious services, release to participate in treatment, or other approved leave as deemed appropriate by the United States Probation Office or community treatment center.

CAUSE

The defendant has admitted that he has relapsed on drugs, using methamphetamine. He has requested, and is in need of, a community corrections center placement to provide him with structure, to assist in the establishment of a residence, and for assistance in obtaining employment.

RECEIVED
SEP 14 2006
OFFICE OF
JUDGE PAUL G. CASSELL

Respectfully submitted,

by

Jody Phillips Gerber

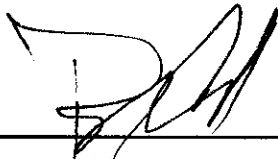
Jody Phillips Gerber

U.S. Probation Officer

Date: September 12, 2006

THE COURT ORDERS:

- ☒ The extension of supervision as noted above
☐ The modification of conditions as noted above
☐ No action
☐ Other


Honorable Paul Cassell
United States District Judge

Date: 9/15/06

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
PROBATION AND PRETRIAL SERVICES OFFICE**

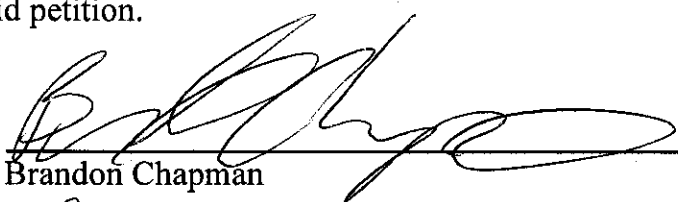
**WAIVER OF RIGHT TO HEARING PRIOR TO
MODIFICATION OF CONDITIONS OF PROBATION/
TERM OF SUPERVISED RELEASE**

I have been advised by United States Probation Officer Jody Phillips Gerber that she has submitted a petition and report to the Court recommending that the Court modify the conditions of my supervision in Case No.2:05-cr-00224-001 PGC. The modification would be:

The defendant shall reside in a community treatment center for a period of up to 120 days, with work release, educational release, medical release, release to attend religious services, release to participate in treatment, or other approved leave as deemed appropriate by the United States Probation Office or community treatment center.

I understand that should the Court so modify my conditions of supervision, I will be required to abide by the new condition(s) as well as all conditions previously imposed. I also understand the Court may issue a warrant and revoke supervision for a violation of the new condition(s) as well as those conditions previously imposed by the Court. I understand I have a right to a hearing on the petition and to prior notice of the date and time of the hearing. I understand that I have a right to the assistance of counsel at that hearing.

Understanding all of the above, I hereby waive the right to a hearing on the probation officer's petition, and to prior notice of such hearing. I have read or had read to me the above, and I fully understand it. I give full consent to the Court considering and acting upon the probation officer's petition to modify the conditions of my supervision without a hearing. I hereby affirmatively state that I do not request a hearing on said petition.



Brandon Chapman

9-13-06

Date

Witness:


Jody Phillips Gerber

United States Probation Officer

UNITED STATES DISTRICT COURT

Central

District of

Utah

UNITED STATES OF AMERICA

V.

FERNANDO ALVAREZ-BRENES

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX205CR000767-001

USM Number: 13021-081

Jason Schatz

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 USC § 1326	Re-Entry of Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/14/2006

Date of Imposition of Judgment

Signature of Judge

Paul Cassell

US District Judge

Name of Judge

Title of Judge

Date

9/15/06

DEFENDANT: FERNANDO ALVAREZ-BRENES
CASE NUMBER: DUTX205CR000767-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

21 months

☒ The court makes the following recommendations to the Bureau of Prisons:

Placement in a facility as close to Los Angeles, Ca. as possible to facilitate family visitation

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: FERNANDO ALVAREZ-BRENES

CASE NUMBER: DUTX205CR000767-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

24 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: FERNANDO ALVAREZ-BRENES
CASE NUMBER: DUTX205CR000767-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally reenter the United States. If the defendant returns to the United States during the period of supervision, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: FERNANDO ALVAREZ-BRENES

CASE NUMBER: DUTX205CR000767-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ <u>0.00</u>	\$ <u>0.00</u>
--------	----------------	----------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: FERNANDO ALVAREZ-BRENES
CASE NUMBER: DUTX205CR000767-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

AHMAD R. SHAYESTEH,)	
)	
Plaintiff,)	Case No. 2:05-CV-85 TC
)	
v.)	
)	
AARON RATY et al.,)	O R D E R
)	
Defendants.)	

Plaintiff, Ahmad R. Shayesteh, an inmate at the Federal Correctional Institution in Fort Dix, New Jersey, filed this *pro se* lawsuit *in forma pauperis* under [28 U.S.C. § 1915](#). See [28 U.S.C.A. § 1915\(b\) \(West 2006\)](#). Plaintiff's Complaint asserts numerous civil rights violations under [Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics, 403 U.S. 388, 91 S. Ct. 1999 \(1971\)](#). Plaintiff also alleges violations of the Right to Financial Privacy Act of 1978 (RFPA), see [12 U.S.C. §§ 3401-3422 \(West 2006\)](#); the Federal Tort Claims Act (FTCA), see [28 U.S.C. §§ 2671-80](#); and, the Privacy Act, see [5 U.S.C. § 552a](#). Prior to screening of the Complaint under [28 U.S.C. § 1915\(e\)](#), Plaintiff effected service of process upon Defendants at his own expense. Defendants responded with a motion to dismiss which has been fully briefed and is now before the Court.

I. Background

Plaintiff is an Iranian citizen and permanent resident of the United States. In January, 1995, Plaintiff rented a safe-deposit box from a bank in Provo, Utah. Plaintiff alleges that

he placed in the box \$80,000 in U.S. currency, and a family heirloom consisting of diamonds worth approximately \$4,000,000.00. Plaintiff last accessed the box in May, 1995. In June, 1995, Plaintiff was charged with two counts of possession of a controlled substance with intent to distribute. On August 21, 1996, Plaintiff was convicted by a jury and was later sentenced to 262 months in prison and a \$10,000 fine.

On May 2, 2002, Steve Gerard and other FBI agents, with the assistance of bank officials, allegedly broke into Plaintiff's safe-deposit box and searched its contents. Plaintiff alleges that the agents also obtained personal financial information regarding Plaintiff from the bank at that time. On May 14, 2002, Gerard allegedly transferred this information to Agent Raty of the Drug Enforcement Agency (DEA).

In early September, 2002, Raty filed an "Application and Affidavit for Seizure Warrant" in this Court which allegedly included information obtained from the bank, as well as information from a Presentence Investigation Report (PSIR) prepared in Plaintiff's criminal case. Based on Raty's affidavit a magistrate judge issued a seizure warrant for the contents of the safe-deposit box. After executing the warrant on September 6, 2002, DEA agents seized \$72,100 in cash from the safe-deposit box. No diamonds or additional funds were reportedly found or seized. The DEA initiated forfeiture proceedings against the

\$72,100 and Plaintiff contested the forfeiture by filing a claim with the DEA's Forfeiture Counsel. On February 5, 2003, a Verified Complaint for Forfeiture In Rem was filed in this Court. See *United States v. \$72,100 in United States Currency*, No. 2:03CV140DS. Agent Raty attested to the truthfulness of the statements in the United States' forfeiture complaint. (2:03CV140DS Docket no. 1 at 7.)

On October 20, 2003, Plaintiff filed an answer to the forfeiture complaint in which he challenged, among other things, the legality of the alleged search and seizure of the contents of his safe-deposit box under the Constitution and the RFPA.

(2:03CV140DS Docket no. 30) Plaintiff also sought damages under the FTCA for the loss of the diamonds and additional currency allegedly missing from the safe-deposit box. On September 16, 2004, Judge Sam dismissed Plaintiff's FTCA claim for failure to exhaust administrative remedies, however, Plaintiff's remaining challenges to the forfeiture action are still pending in that case. After pursuing his administrative remedies with the FBI and DEA to no avail, Plaintiff filed this suit on February 11, 2005.

Plaintiff's Complaint is comprised of thirteen separate "counts" based on four separate causes of action. Claims 1 through 8 (*Bivens* claims) assert violations of Plaintiff's civil rights by agents of the United States in their individual

capacities.¹ Plaintiff seeks compensatory and punitive damages from these defendants for the loss of the diamonds and currency allegedly missing from his safe-deposit box. Claims 9 and 10 seek damages under the Privacy Act against Assistant U.S. Attorney Richard W. Daynes, and U.S. Attorney Paul M. Warner, in their official capacities, as well as the United States Attorney's office. Claims 11 and 12 seek compensatory and punitive damages against the FBI, DEA, and Agent Raty in his official capacity, under the RFPA. Finally, Claim 13 seeks damages from the United States under the FTCA on theories of trespass, conversion and negligence.

I. Motion to Dismiss

A. Voluntarily Dismissed Claims

In his response to Defendants' Motion to Dismiss Plaintiff concedes that two of his claims are not well-plead and are subject to dismissal. Plaintiff seeks leave to correct these deficiencies by amending his complaint.

Defendants argue that Claim 2, which purports to be a *Bivens* claim against Gerard in his official capacity, must be construed as a claim against the United States. See [*Farmer v. Perrill*, 275 F.3d 958, 963 \(10th Cir. 2001\)](#). Thus, Defendants argue that

¹ As further discussed below, although Claim 2 is against Gerard in his official capacity, Plaintiff concedes that official capacity suits are not permitted under *Bivens*, thus, Plaintiff seeks leave to amend the Complaint to restate this claim under the FTCA.

Claim 2 is barred by sovereign immunity. Plaintiff concedes that *Bivens* does not authorize suits against federal officials in their official capacities. However, Plaintiff argues that the United States has waived its sovereign immunity as to this claim, therefore, he seeks leave to amend the Complaint to restate this claim under the FTCA. Accordingly, the Court dismisses Claim 2 of the Complaint and grants Plaintiff's motion file an amended complaint.

Similarly, regarding Claim 3, Defendants argue that Plaintiff cannot sue Gerard individually under *Bivens* for wrongfully disclosing Plaintiff's financial information because Congress has created an alternative statutory remedy instead. Plaintiff concedes that "the [RFPA] provides the exclusive remedy for the actions of Defendant Steve Gerard in his individual capacity in Count 3." (Mem. Opp. Mot. Dis. at 2.) Plaintiff seeks leave to amend his Complaint to restate the allegations against Gerard from Claim 3 as part of Claim 11 under the RFPA. However, in light of the Court's ruling regarding Claim 11, set forth below, the Court dismisses Claim 3 without prejudice.

B. Comity/Judicial Economy

Defendants argue that the issues presented in Claims 1, 5, 6, 8, 11, and 12 - which challenge the legality of the search and seizure of Plaintiff's safe-deposit box and financial records, and the adequacy of the procedures leading to the search and

seizure - have also been raised in the forfeiture action pending before Judge Sam. Defendants also assert that the parties in both actions are the same because Plaintiff has made himself a de facto intervenor in the forfeiture action by claiming to be the owner of the defendant property in that case. Thus, Defendants argue that as a matter of comity, and in the interest of preserving scarce judicial resources, these claims should be dismissed without prejudice pending the outcome of the forfeiture action. Plaintiff denies that the issues presented in the forfeiture action are the same as those presented in Claims 1, 5, 6, 8, 11, and 12 here, and he also asserts that it is unlikely the forfeiture action will dispose of any of the claims presented here.

The Court agrees that resolution of the forfeiture action will not necessarily dispose of all the identified claims, however, it will likely require determination of many of the same legal and factual questions presented in those claims. And, such a determination could have preclusive effect on this litigation. On the other hand, dismissal of these claims without prejudice may cause them to be barred under the applicable statute of limitations. Thus, the Court denies Plaintiff's motion to dismiss without prejudice Claims 1, 5, 6, 8, 11, and 12, and, instead, stays these claims pending the outcome of the related forfeiture case. Once that case is resolved, either party may

move to lift the stay and proceed on these claims.

C. Remaining *Bivens* Claims

Defendants move for dismissal of Claims 4 and 7 on the basis of prosecutorial and/or qualified immunity. In Claim 4, Plaintiff alleges that AUSA Daynes and DEA Agent Raty violated Plaintiff's constitutional rights by disclosing confidential information from Plaintiff's Presentence Investigation Report (PSIR) when applying for a seizure warrant. In Claim 7, Plaintiff alleges that U.S. Attorney Warner and AUSA Daynes violated Plaintiff's purported constitutional right to privacy by filing the Verified Complaint for Forfeiture In Rem, which allegedly contained confidential information obtained from Plaintiff's PSIR.

The Federal Defendants' Memorandum in Support of Motion to Dismiss asserts that the individuals named in Claims 4 and 7 are absolutely immune from suit based on prosecutorial immunity. It is well established that a prosecutor acting within the scope of his duties in initiating and pursuing a criminal prosecution enjoys absolute immunity from suit. [Imbler v. Pachtman, 424 U.S. 409, 424, 96 S. Ct. 984, 992 \(1976\)](#). "It is also well established that this absolute prosecutorial immunity extends to . . . agency officials who perform functions analogous to those of a prosecutor in initiating and pursuing civil and administrative enforcement proceedings." [Pfeiffer v. Hartford](#)

Fire Ins. Co., 929 F.2d 1484, 1489 (10th Cir. 1991).

Regarding Claim 7, Plaintiff does not dispute that Warner and Daynes' filing of the forfeiture complaint was a prosecutorial function. Nor does Plaintiff dispute that "prosecutorial immunity extends to proceedings where the prosecutor institutes a civil forfeiture proceeding." Blakely v. United States, 276 F.3d 853, 871 (6th Cir. 2002). Instead, Plaintiff argues that as a matter of public policy prosecutors should not be allowed to invoke immunity against a pro se litigant such as Plaintiff because doing so would remove a potential check on the prosecutors' power, namely the threat of having to pay attorney's fees. This argument is entirely without merit. Plaintiff has not cited a single case suggesting that a plaintiff's pro se status has any bearing on a prosecutor's entitlement to prosecutorial immunity. Thus, Defendants' motion to dismiss Claim 7 is granted.

Regarding Claim 4, Plaintiff contends that Daynes and Raty were not performing prosecutorial functions, but rather were acting in a an "investigative mode" at the time of the alleged privacy violations. Absolute immunity does not extend to actions that are primarily investigative or administrative in nature, unless those acts are "necessary for the prosecutor to fulfill his function as an officer of the court." See *id.* at 1490. Rather than dispute the issue of absolute immunity, Defendants'

reply memorandum asserts that Warner, Daynes and Raty are nevertheless entitled to qualified immunity against this claim.² Defendants also assert that the Court lacks jurisdiction to hear this claim because the Privacy Act's remedies preclude a *Bivens* claim.

It is well established that "[w]hen Congress provides an alternative remedy [to *Bivens*], it may, of course, indicate its intent, by statutory language, by clear legislative history, or perhaps even by the statutory remedy itself, that the Court's power should not be exercised." [*Bush v. Lucas*, 462 U.S. 367, 378 \(1983\)](#). Defendants cite numerous cases holding that a *Bivens* claim should not be entertained where the Privacy Act provides a meaningful remedy for the injury alleged. See [*Chung v. United States Dep't of Justice*, 333 F.3d 273, 274 \(D.C. Cir. 2003\)](#) (affirming district court's dismissal of plaintiff's *Bivens* claims "because . . . they are encompassed within the remedial scheme of the Privacy Act"); [*Downie v. City of Middleburg Hts.*, 301 F.3d 688, 696 \(6th Cir. 2002\)](#) (agreeing with district court that "because Privacy Act is a comprehensive legislative scheme that provides a meaningful remedy for the kind of wrong [plaintiff] alleges that he suffered, we should not imply a *Bivens* remedy"); [*Newmark v. Principi*, 262 F. Supp. 2d 509, 518](#)

² Defendants also raised the defense of qualified immunity in their initial supporting memorandum, albeit in a footnote.

(E.D. Pa. 2003) (holding that "based on the comprehensive remedial scheme provided by Congress in the Privacy Act," plaintiff could not maintain a *Bivens* action for disclosure of employment records); *Sullivan v. U.S. Postal Serv.*, 944 F. Supp. 191, 195 (W.D.N.Y.1996) (stating that a "'comprehensive scheme' for dealing with privacy violations exists in the Privacy Act").

The Court finds these cases persuasive and concludes that the Privacy Act provides the exclusive remedy for the injuries alleged in Claim 4 of Plaintiff's Complaint. Thus, Defendants' motion to dismiss Claim 4 for lack of jurisdiction under *Bivens* is granted. However, if Plaintiff so chooses, he may amend his complaint to restate the allegations of Claim 4 under the Privacy Act.

D. Privacy Act

Federal Defendants' Memorandum in Support of Motion to Dismiss asserts that Claims 9 and 10, which seek relief under the Privacy Act, are barred by the state of limitations because the disclosures challenged in those claims occurred more than two years before Plaintiff filed his complaint in this case. Plaintiff's opposition brief argues that the under the doctrine of equitable tolling the limitations period did not begin to run until he first became aware of the alleged violations, which he asserts was less than two years prior to filing of the complaint. Defendants reply brief does not rebut Plaintiff's equitable

tolling argument but instead argues that Plaintiff's allegations fail to state a claim under the Privacy Act.

The Court notes that Plaintiff has not had an opportunity to address Defendants' argument that Claims 9 and 10 fail to state a claim because it was first raised in Defendants' reply brief. In addition, Plaintiff may be able to amend his complaint to state a Privacy Act claim based on the allegations from Claim 4, as discussed above. Thus, the Court finds that dismissal under Rule 12(b)(6) of Claims 9 and 10 would be premature at this time. Defendants may file a second motion to dismiss the claims after Plaintiff has had an opportunity to amend his complaint.

E. Federal Tort Claims Act

Federal Defendants' Memorandum in Support of Motion to Dismiss also argues that Claim 13 was barred under the applicable statute of limitations. However, in their reply brief Defendants concede that this claim was timely filed under the "mailbox rule." Thus, Defendants admit that Plaintiff's claim of trespass under the FTCA cannot be disposed of in this motion to dismiss; Defendants have therefore requested leave to answer this claim following the Court's ruling here. That request is granted.

ORDER

Based on the foregoing, **IT IS HEREBY ORDERED** that:

(1) Defendants' motion to dismiss without prejudice Claims 1, 5, 6, 8, 11, and 12 is **denied**; however, these claims are **stayed** pending a ruling in the related forfeiture proceeding;

(2) Defendants' motion to dismiss Claims 2, 3, 4, and 7 is **granted**;

(3) Defendants' motion to dismiss Claims 9, 10, and 13, is **denied**;

(4) Plaintiff shall have thirty days in which he may amend the complaint in compliance with this order; and,

(5) Defendants shall answer or otherwise respond to Plaintiff's amended complaint within sixty days from the date of filing. However, if no amended complaint is filed, Defendants' answer to Plaintiff's remaining claims shall be filed within forty days from the date of this order.

DATED this 20th day of September, 2006.

BY THE COURT:



Tena Campbell
United States District Judge

FILED
U.S. DISTRICT COURT

2006 SEP 19 A 10:04

CLERK OF DISTRICT COURT

CLERK OF DISTRICT COURT

Judson T. Pitts (9946)
Attorney for Plaintiff
3760 Highland Drive Suite 429
Salt Lake City, Utah 84106
Email: judsonpitts@hotmail.com
Telephone: (801) 273-3955
Fax: (801) 273-3352

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

MARK NUTTALL, Plaintiff, v. THE FIRST NATIONAL BANK OF OMAHA, aka FIRST BANKCARD CENTER, Defendant.	Order of Dismissal With Prejudice Jury Demanded Civil No. 2:05cv00097 DB Judge: Dee Benson
---------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------

Upon motion of the parties and good cause appearing therefor, the parties to this action having entered into a settlement agreement resolving their disputes, the Court hereby:

ORDERS, ADJUDGES, AND DECREES that the Complaint filed by the plaintiff is hereby dismissed with prejudice, with each party to bear their own costs and attorneys' fees.

Dated this 18th day of September, 2006:

BY THE COURT:


Judge Dee Benson
United States District Court

FILED
DISTRICT COURT
SEP 20 A 10:40
DISTRICT OF UTAH
CLERK OF COURT
FBI-PORTLAND

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BRYAN L. TRAVIS,

Plaintiff,

vs.

PARK CITY MUNICIPAL
CORPORATION, PARK CITY POLICE
DEPARTMENT, AND DOES 1,,

Defendants.

ORDER OF REFERENCE

Civil No. 2:05 CV 269

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(A) and the rules of this Court, the above entitled case is referred to Magistrate Judge Wells. The magistrate judge is directed to hear and determine any nondispositive pretrial matters pending before the Court.

DATED this 19th day of September, 2006.

BY THE COURT:


DEE BENSON
United States District Judge

RECEIVED

FILED
U.S. DISTRICT COURT

SEP 17 2006

2006 SEP 19 P 4: 32

OFFICE OF
JUDGE TENA CAMPBELL
RECEIVED CLERK

John L. Young (3591)
YOUNG, ADAMS & HOFFMAN, LLP
170 South Main Street, Suite 1125
Salt Lake City, Utah 84101-1639
Telephone: (801) 359-1900
Facsimile: (801) 359-1980
Attorneys for Plaintiff

DISTRICT OF UTAH

BY: TENA CAMPBELL

SEP 17 2006

U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

COATES CONSTRUCTION &
ENGINEERING, INC., a Utah corporation,

Plaintiff,

vs.

HEXCEL CORPORATION, a Delaware
corporation,

Defendant.

HEXCEL CORPORATION, a Delaware
corporation,

Counterclaimant,

vs.

COATES CONSTRUCTION &
ENGINEERING, INC., a Utah corporation,

Counterdefendant.

**ORDER OF DISMISSAL WITH
PREJUDICE AS AGAINST COATES
CONSTRUCTION & ENGINEERING,
INC. AND OHIO CASUALTY
INSURANCE COMPANY ONLY**

Case No. 2:05 CV 00532 TC
(Consolidated with Case No. 2:05cv00652 TS) **TC**

Judge Tena Campbell

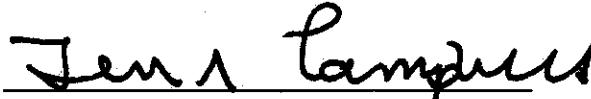
ORDER

Based upon the Stipulation of the parties herein, and good cause appearing, and the Court having being fully advised in the premises:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Amended Complaint filed by Adams & Smith, Inc. in the above entitled action is hereby dismissed with prejudice, as against Coates Construction & Engineering, Inc. and Ohio Casualty Insurance Company only. Each party to bear their own costs. The claim of Adams & Smith, Inc., set forth in the Amended Complaint as against Hexcel Corporation are specifically reserved and are not affected by this Order.

DATED this 19 ^{Sept} day of August, 2001.

BY THE COURT:



Tena Campbell
United States District Judge

FILED
U.S. DISTRICT COURT

2006 SEP 19 P 4:32

RECEIVED

DISTRICT OF UTAH

SEP 15 2006

BY: _____
DEPUTY CLERK

OFFICE OF
JUDGE TENA CAMPBELL

Stephen J. Trayner, #4928
H. Scott Jacobson, #8469
STRONG & HANNI
Attorneys for Third Party Defendants
Pandrol Jackson and Harsco Company
3 Triad Center, Suite 500
Salt Lake City, Utah 84180
Telephone: (801) 532-7080
Facsimile: (801) 596-1508

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH**

UNITED STATES OF AMERICA,

Plaintiffs,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

UNION PACIFIC RAILROAD COMPANY,

Third-Party Plaintiff,

v.

PANDROL JACKSON and HARSCO
COMPANY,

Third-Party Defendant.

**ORDER GRANTING
STIPULATED MOTION FOR
EXTENSION OF TIME TO FILE
SUMMARY JUDGMENT REPLY
MEMORANDUM**

Case No. 2:05CV00545 TC

Judge Tena Campbell

Having fully considered the parties' Stipulation and Motion for Extension of Time to File Summary Judgment Reply Memorandum, and for good cause shown, it is hereby

ORDERED that said Motion is GRANTED, and third-Party defendants Pandrol Jackson and Harsco Company shall have until September 29, 2006 to file their summary judgment reply memorandum.

DATED this 19 day of September, 2006.

BY THE COURT

By Tena Campbell
Tena Campbell
U.S. District Court Judge

Approved as to form:

BERMAN & SAVAGE

By E. Scott Savage
E. Scott Savage
Casey K. McGarvey
Patrick E. Johnson
Attorneys for Union Pacific Railroad Co.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

2006 SEP 19 P 4:32

ALLEN WOLFSON,)
)
Plaintiff,) Case No. 2:05-CV-798 TC
)
v.) District Judge Tena Campbell
)
UNITED CONCERTS et al.,) O R D E R
)
Defendants.) Magistrate Judge David Nuffer

Plaintiff, Allen Wolfson, filed a prisoner civil rights complaint and was granted permission to proceed *in forma pauperis*. When Plaintiff did not comply with the Court's order to pay an initial partial filing fee (IPFF) of \$72, the Court dismissed his complaint. Plaintiff has since paid his IPFF and moves to have his case reinstated.

IT IS ORDERED that Plaintiff's motion is granted.
Plaintiff's case is hereby reinstated.

DATED this 19 day of September, 2006.

BY THE COURT:


TENA CAMPBELL
United States District Judge

IN THE UNITED STATES DISTRICT COURT FILED
U.S. DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION
2006 SEP 20 A 11:17

CLERK OF UTAH

SHARI LEVITIN KATZ, an individual,
and SHARI LEVITIN GROUP, INC., a
Utah corporation,

Plaintiffs,

vs.

DAN KING, an individual, DAN KING
AND ASSOCIATES, LTD., DAN KING
& ASSOC., INC., AND DOES 1-25,

Defendants.

Civil No. 2:05-CV-0835J

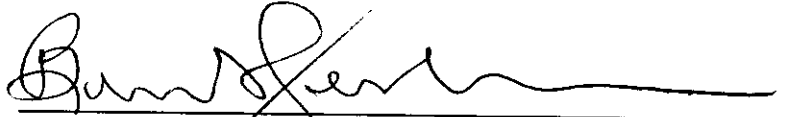
ORDER

The final pretrial conference in the above matter set for Friday, September 22, 2006, is vacated. A new date will be set for final pretrial conference and submission of the proposed pretrial order at the hearing on the motion to withdraw on Tuesday, September 26, 2006, at 1:20 p.m.

SO ORDERED.

DATED this 20 day of September, 2006.

BY THE COURT:



Bruce S. Jenkins
United States Senior District Judge

2016 SEP 19 P 2:27

[illegible]

ORDER

J. Thomas Greene
Honorable J. Thomas Greene
United States District Court

Glenn C. Hanni, #A1327
Scott R. Jenkins, #1659
J. Simón Cantarero, #10208
STRONG & HANNI, P.C.
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Tel.: (801) 532-7080
Fax: (801) 596-1508

Attorneys for Linda Fields

FILED
U.S. DISTRICT COURT
RECEIVED 2006 SEP 19 P 2:28
SEP 19 2006
OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

LINDA W. FIELDS,

Plaintiff,

vs.

**CUNA MUTUAL INSURANCE SOCIETY,
INC.,**

Defendant.

**CUNA MUTUAL INSURANCE SOCIETY,
INC.,**

Counterclaim-Plaintiff,

vs.

**LINDA W. FIELDS, ESTATE OF JERRY
PALENSKY, JOSEF PALENSKY,
MARIE MASNA, JIRI PALENSKY, and
DOES 1-10,**

Counterclaim-Defendants,

**ORDER GRANTING RESCHEDULE OF
ORAL ARGUMENTS ON PENDING
MOTIONS FOR SUMMARY JUDGMENT
AND TO STRIKE AFFIDAVITS**

Civil No. 2:05-CV-01027 BSJ

Judge Bruce S. Jenkins

In consideration of the Motion to Reschedule Oral Arguments, stipulated by counsel for all parties and for good cause having been shown, it is hereby ORDERED that the Oral Hearing to address the Estate of Jerry Palensky's Motion for Summary Judgment and the Estate of Jerry Palensky's Motion to Strike Affidavits of Linda Fields, Jay Cady, and Mark Lemler which are currently pending before this Court, shall be held on Monday, September 25, 2006 at 3 P.M.

Dated this 19 day of Sept, 2006.

UNITED STATES DISTRICT COURT

By: _____


Bruce S. Jenkins
District Court Judge

Approved as to Form:

MILLER GUYMON, P.C.

/s/ Blake D. Miller

Blake D. Miller
Attorneys for Estate of Jerry Palensky

STRONG & HANNI, P.C.

/s/ J. Simón Cantarero

J. Simón Cantarero
Attorneys for Linda Fields

BALLARD SPAHR ANDREWS & INGERSOLL, LLP

/s/ Craig H. Howe

Craig H. Howe
Attorneys for CUNA Mutual Insurance

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

YOU LI,

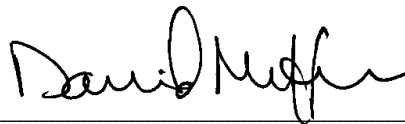
Defendant.

**ORDER TO RELEASE
DEFENDANT'S I-94 CARD TO
IMMIGRATION ATTORNEY**

Case No. 2:06 CR 00081 TC

Based upon the Motion of the Defendant, the Court hereby orders the release of You Li's I-94 card directly to his immigration attorney, Vinh Ly, for a period of two weeks. Mr. Li's I-94 card, visa and passport are currently in the custody of Mr. Michael Duncan at the United States District Court.

DATED this 20th day of September, 2006.



David Nuffer
United States Magistrate Judge

UNITED STATES DISTRICT COURT

Central Division

District of

Utah

UNITED STATES OF AMERICA

V.

Joe Holm

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX206CR000156-001

USM Number: 13582-081

Steven B. Killpack, FPD

Defendant's Attorney

FILED
U.S. DISTRICT COURT

2006 SEP 20 A 10:35

CLERK OF COURT

DEPUTY CLERK

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of information

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC Sec 1343	Wire Fraud		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/28/2006

Date of Imposition of Judgment

J. Thomas Greene
Signature of Judge

J. Thomas Greene

Name of Judge

U.S. District Judge

Title of Judge

September 19, 2006
Date

DEFENDANT: Joe Holm
CASE NUMBER: DUTX206CR000156-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

18 months

☒ The court makes the following recommendations to the Bureau of Prisons:

The court recommends defendant be placed in a low level facility in southern California.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 2 p.m. on 9/26/2006

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Joe Holm
CASE NUMBER: DUTX206CR000156-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

24 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Joe Holm

CASE NUMBER: DUTX206CR000156-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall refrain from incurring new credit charges or opening additional lines of credit, unless she is in compliance with any established payment schedule and obtains the approval of the probation office.
2. The defendant shall provide the probation office access to all requested financial information.
3. The defendant shall abide by the following occupational restrictions: The defendant is prohibited from participating in any manner in the affairs of any federally regulated financial institution and shall not have direct or indirect control over the assets or funds of others.
4. The defendant shall submit her person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: Joe Holm

CASE NUMBER: DUTX206CR000156-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$ 132,649.93

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Willow Creek Pet Center	\$132,649.93	\$132,649.93	
2055 East Creek Road			
Sandy, Utah 84093			

TOTALS	\$ <u>132,649.93</u>	\$ <u>132,649.93</u>
--------	----------------------	----------------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☐ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Joe Holm
CASE NUMBER: DUTX206CR000156-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 132,749.93 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
- Special Assessment Fee of \$100 is due immediately. Restitution of \$132,649.93 is due immediately, and shall be payable at a minimum rate of \$250 per month upon release from confinement.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10
are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHRISTOPHER JEPPSON,

Defendant.

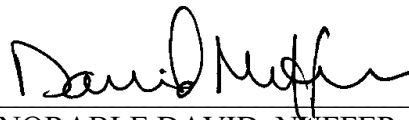
ORDER AMENDING CONDITIONS OF
PRETRIAL RELEASE

Case No. 2:06 CR 314 TC

Honorable Tena Campbell

Based upon motion of the Defendant, stipulation of the parties, no objection from Pretrial Services nor the Assistant U.S. Attorney, and good cause appearing therefor, IT IS HEREBY ORDERED that the Defendant's Conditions of Release be amended to remove the no alcohol condition. Defendant should continue to abide by all previously set conditions of release.

Dated this 20th day of September, 2006.



HONORABLE DAVID NUFFER
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ERIK SILVA, et al.,

Defendants.

ORDER

Case No. 2:06-cr-00490-TC-PMW-3

Judge Tena Campbell


Magistrate Judge Paul M. Warner

This matter was referred to Magistrate Judge Paul M. Warner by District Judge Tena Campbell pursuant to 28 U.S.C. § 636(b)(1)(A). Before the court is Erik Silva's ("Defendant") motion to enlarge the time for filing motions in this case.¹ Based upon the motion and good cause appearing therefor, Defendant's motion is GRANTED. It is ORDERED that the deadline for filing motions in this case is extended to October 2, 2006.

It is FURTHER ORDERED that the additional time for filing motions in this case shall be excluded for purposes of speedy trial pursuant to 18 U.S.C. § 3161(h)(8)(A) & (B).

DATED this 20th day of September, 2006.

BY THE COURT:



PAUL M. WARNER
United States Magistrate Judge

¹ Docket no. 27.

FILED
U.S. DISTRICT COURT

20 SEP 19 P 2:28

CLERK OF COURT

19 SEP 2006

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION


UNITED STATES OF AMERICA, : 2:06 CR 538 JTG
Plaintiff, : ORDER SETTING JURY TRIAL AND
vs. : FURTHER STATUS CONFERENCE
STEVEN C. WARD, : Judge J. Thomas Greene
Defendant.

This matter came before the Court on September 13, 2006, for a status and scheduling conference. The defendant was represented by counsel, Gregory G. Skordas. The United States was represented by Assistant United States Attorney Robert A. Lund.

The Court heard discussion regarding the nature and status of the case, and being now fully advised, the Court hereby enters the following ORDER:

A three-day jury trial in the instant case will commence on October 11, 2006 at ^{10:00 AM.} ~~8:00 a.m.~~
An additional status conference will be held on October 4, 2006 at 10:00 a.m. Counsel shall file proposed jury instructions and voir dire questions with the court on that date or advise the court that the case will not proceed to trial.

DATED this 19th day of September, 2006.


J. THOMAS GREENE
United States District Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FILED
US DISTRICT COURT
2006 SEP 19 P 2:28

UNITED STATES OF AMERICA,

Plaintiff,

KIP BEESLEY,

Defendant.

SCHEDULING ORDER

Case No. 2:06CR572 JTG

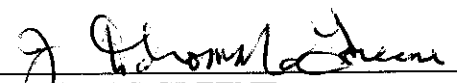
Judge J. Thomas Greene

On September 14, 2006, attorneys for all parties appeared for scheduling conference, before Honorable J. Thomas Greene, United States District Judge. The Court ordered the following schedule:

- 1) October 6, 2006: Defense motions due.
- 2) November 8, 2006: Parties are to notify the Court if there will be a trial or if there will be a negotiated plea. If there will be a trial, copies of stipulated Jury Instructions, Voir Dire and Verdict Forms are also due on this date.
- 3) November 15-17, 2006: Trial commences at 10:00 a.m.

All parties should govern themselves accordingly.

DATED this 19th day of September, 2006.


J. THOMAS GREENE
United States District Court

United States District Court

CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA

V.

ORDER SETTING CONDITIONS OF RELEASE

Roger Schmitt

Case Number: 2:06CR573DB

IT IS SO ORDERED that the release of the defendant is subject to the following conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local or tribal law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing of any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed

as directed. The defendant shall next appear at (if blank, to be notified)

US District Court

PLACE

350 South Main, SLC

on

as directed

DATE AND TIME

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

- (✓) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- () (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of

_____ dollars (\$) _____

in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

SEP 20 2006

MARKUS B. ZIMMER, CLERK
BY _____
DEPUTY CLERK

Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

- () (6) The defendant is placed in the custody of:
(Name of person or organization)
(Address)
(City and state) (Tel.No.)

who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: _____

Custodian or Proxy

- () (7) The defendant shall:
- () (a) maintain or actively seek employment.
 - () (b) maintain or commence an educational program.
 - () (c) abide by the following restrictions on his personal associations, place of abode, or travel:
 - () (d) avoid all contact with the following named persons, who are considered either alleged victims or potential witnesses:
 - (✓) (e) report on a regular basis to the supervising officer as directed.
 - () (f) comply with the following curfew:
 - () (g) refrain from possessing a firearm, destructive device, or other dangerous weapon.
 - () (h) refrain from excessive use of alcohol.
 - () (i) refrain from any use or unlawful possession of a narcotic drug and other controlled substances defined in 21 U.S.C. §802 unless prescribed by a licensed medical practitioner.
 - () (j) undergo medical or psychiatric treatment and/or remain in an institution, as follows:
 - () (k) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property
 - () (l) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money:
 - () (m) execute a bail bond with solvent sureties in the amount of \$
 - () (n) return to custody each (week)day as of _____ o'clock after being released each (week)day as of _____ o'clock for employment, schooling or the following limited purpose(s):
 - () (o) surrender any passport to
 - () (p) obtain no passport
 - () (q) the defendant will submit to drug/alcohol testing as directed by the pretrial office. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment, if deemed advisable by supervising officer.
 - () (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the supervising officer.
 - () (s) submit to an electronic monitoring program as directed by the supervising officer.
 - (✓) (t) not to open any new loans or new lines of credit, without permission of PTS; provide PTS with financial information

Advice of Penalties and Sanctions

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both.
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in additions to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.

X Roger Schultz
Signature of Defendant

~~_____
Address~~
~~_____
City and State~~ ~~_____
Telephone~~

Directions to the United States Marshal

- () The defendant is ORDERED released after processing.
- () The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: 9/20/06

Brooke C. Wells
Signature of Judicial Officer

Magistrate Judge Brooke C. Wells

Name and Title of Judicial Officer

FILED
U.S. DISTRICT COURT

2006 SEP 19 P 2:28

CLERK OF COURT

130-887023

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA)

Plaintiff,)

vs.)

LARRY LEE JENSEN,)

Defendant.)

**PRETRIAL ORDER PURSUANT
TO RULE 17.1 F.R.Cr.P.**

Case No. 2:06CR603 JTG

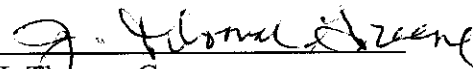
Judge J. Thomas Greene

The above-entitled action came on for pretrial conference September 14, 2006, before J. Thomas Greene, United States District Court Judge. Defense counsel was present. Based thereon the following is entered:

1. A jury trial in this matter is set for October 26-27, 2006, at ^{10:00 AM}~~8:30 a.m.~~
2. The government has an open file policy re: discovery.
Yes X No
3. Pretrial motions are to be filed by October 2, 2006 at 5:00 p.m.
4. Plea negotiations should be completed by October 12, 2006. If negotiations are not completed for a plea by the date set, the case will be tried.
5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.
6. Defendant's release or detention status: **Released**.

7. All exhibits will be premarked before Judge J. Thomas Greene's clerk before trial.
8. Other order and directions are: **A status conference is set for October 12, 2006, at 10:00 a.m.**
9. Interpreter needed: Yes _____ No X Language _____

DATED this 19th day of September, 2006.


J. Thomas Greene
District Court Judge

THE COOPER CHRISTENSEN LAW FIRM, LLP
820 South Valley View Blvd & Las Vegas, Nevada 89107
Phone: 702.435.4175 & Fax: 702.877.7424

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

SEP 20 2006
MARKUS B. ZIMMER, CLERK
BY DEPUTY CLERK

1 THE COOPER CHRISTENSEN LAW FIRM, LLP
2 Aaron M. Waite, Esq. (Utah Bar No. 8992)
3 820 S. Valley View Blvd.
4 Las Vegas, Nevada 89107
(702) 435-4175
Attorneys for Plaintiff

5 **IN THE UNITED STATES DISTRICT COURT**
6 **FOR THE DISTRICT OF UTAH**

7 CRYSTAL PACIFIC FINANCIAL
8 GROUP, LLC,

9 Plaintiff,

10 vs.

11 MICHAEL WHITEHEAD, an individual;
12 EMILIE WHITEHEAD, an individual;
13 UNITED STATES OF AMERICA; DOES
1 - 10; and ROE CORPORATIONS 1 -
10, inclusive,

14 Defendants.
15

)
)
) Case No. 2:06-CV-00126 DB
)
)

16 **STIPULATION AND ORDER**
17 **REGARDING SETTLEMENT**

18 Plaintiff CRYSTAL PACIFIC FINANCIAL GROUP, LLC (hereinafter "Plaintiff"), by
19 and through counsel Aaron M. Waite, Esq., of The Cooper Christensen Law Firm, LLP, and the
20 United States of America, by and through counsel Chad D. Nardiello, Esq., Trial Attorneys, Tax
21 Division, U.S. Department of Justice, hereby stipulate and agree as follows:

22 1. Plaintiff will pay Fifty Five Thousand Dollars and Zero Cents (\$55,000.00)
23 (hereinafter the "Settlement Amount") to the "United States Treasury" by certified or cashier's
24 check.

25 2. Upon receipt of the Settlement Amount, the United States of America and its
26 agency, the Internal Revenue Service, shall discharge the real property commonly known as 925
West 1340 North, Orem, Utah 84057, Tax ID 55-207-0005 (hereinafter the "Property"), from all

1 federal tax liens filed against Michael Whitehead and Emilie Whitehead, including but not
2 limited to the tax liens for \$2,078.88 and \$125,743.64, which are recorded with the Utah County
3 Recorder as entry numbers 9529:2005 and 9530:2005, and any redemption rights. The United
4 States stipulates and agrees that it has no claim or interest in the Property based on its federal tax
5 liens filed against Michael Whitehead and Emilie Whitehead.

6 3. Plaintiff will pay the Settlement Amount to the United States Treasury through
7 escrow at the time of the closing of the sale of the Property by Plaintiff (hereinafter the
8 "Closing"). Plaintiff anticipates that the Closing will occur within 30 days after the execution of
9 this stipulation by the parties hereto.

10 4. All claims by and between the Plaintiff and the United States of America in this
11 case shall be dismissed with prejudice.

12 5. The Plaintiff and the United States of America shall each bear their own
13 attorneys' fees, costs, and all other litigation expenses incurred in this case.

14 6. The United States of America will provide to Plaintiff, in writing, the name and
15 telephone number of an agent of the Internal Revenue Service with whom the title company
16 handling the Closing may coordinate the release and discharge of the liens and the payment of
17 the Settlement Amount to the Internal Revenue Service.
18
19
20
21
22

23 * * *

24 * * *

1 7. Plaintiff's Motion For: (1) Sale of Property; (2) Waiver of Tax Liens Against
2 Property; and (3) Expedited Decision or Hearing, and the Motion to Dismiss filed by the United
3 States of America, shall be withdrawn.

4 DATED this 6th day of September, 2006.

5 THE COOPER CHRISTENSEN LAW FIRM, LLP
6
7 

8 Aaron M. Waite, Esq. (Utah Bar No. 8992)
820 South Valley View Boulevard
9 Las Vegas, NV 89121
(702) 435-4175

10 DATED this 5th day of September, 2006.

11 THE UNITED STATES OF AMERICA
12 

13
14 Phillip E. Blondin, Esq.
15 Chad D. Nardiello, Esq.
16 Trial Attorneys, Tax Division
17 U.S. Department of Justice
PO Box 683
Ben Franklin Station
Washington, DC 20044-0683

18 **IT IS SO ORDERED:**
19
20
21
22
23
24
25
26


UNITED STATES DISTRICT JUDGE, or
UNITED STATES MAGISTRATE JUDGE,

DATED: Sept. 19th 2006

RECEIVED

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH
CENTRAL DIVISION

FILED 2006
U.S. DISTRICT COURT
OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS
2006 SEP 19 PM 2:28

STAN OVERTON, individually and as
TRUSTEE OF THE MAY 17, 2003 BARON
ST. JOHN REVOCABLE LIVING TRUST;

Plaintiff,

vs.

ATLAS STOCK TRANSFER
CORPORATION,

Defendant.

Index No. 2:06cv00153 BSJ

BY: DEPUTY CLERK

PROPOSED ORDER


Upon the motion made by Plaintiff with the consent of Defendant, and good cause appearing,

IT IS HEREBY ORDERED THAT:

1. Plaintiff's shall have until and including September 25, 2005, within which to file and serve a reply in further support of Plaintiff's Motion for Summary Judgment and an opposition to Defendant's Cross-Motion for Summary Judgment; and
2. The motion hearing scheduled for September 29, 2006 at 9:30 a.m. is continued to October 31, 2006, at 3:00 p.m.

DATED this 19 day of September, 2006.

BY THE COURT:



HONORABLE BRUCE S. JENKINS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

**UDK SOLUTIONS, INC. dba UTAH
DISASTER KLEENUP, a Utah
corporation; and DISASTER KLEENUP
INTERNATIONAL, INC., a Delaware
corporation,**

Plaintiffs,

v.

**DISASTER CLEAN-UP SERVICE, LLC;
and MOST WANTED CARPET CARE,
LLC,**

Defendants.

ORDER

Case No. 2:06-cv-00192-TS-PMW

Judge Ted Stewart

Magistrate Judge Paul M. Warner

This matter was referred to Magistrate Judge Paul M. Warner by District Judge Ted Stewart pursuant to 28 U.S.C. § 636(b)(1)(A). Before the court are (1) Plaintiffs' motion for leave to amend their complaint to add new parties;¹ and (2) the parties' stipulated motion to extend the deadline for filing motions to amend pleadings.²

The court has reviewed Plaintiffs' motion and determined that it is supported by good cause. Therefore, it is **HEREBY ORDERED** that Plaintiffs' motion for leave to amend their

¹ Docket no. 23.

² Docket no. 25.

complaint to add new parties is GRANTED. Plaintiffs may file the First Amended Complaint attached as Exhibit A to the memorandum in support of their motion.

The court has also reviewed the parties' stipulated motion and determined that it is supported by good cause. Therefore, it is HEREBY ORDERED that the parties' motion to extend the deadline for filing motions to amend pleadings is GRANTED. The deadline for filing motions to amend the pleadings is extended until twenty-four (24) days after Defendants serve Plaintiffs with their responses to Plaintiffs' discovery requests, including the production of documents responsive to Plaintiffs' First Request for Production of Documents.

DATED this 20th day of September, 2006.

BY THE COURT:

A handwritten signature in cursive script, reading "Paul M. Warner", written in black ink.

PAUL M. WARNER
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

2006 SEP 20 A 9:59

RECEIVED CLERK

SEP 19 2006

U.S. DISTRICT COURT

QUALITY MULTIMEDIA, INC., a Utah
corporation,

Plaintiff,

vs.

ABC / KANE PRODUCTIONS
INTERNATIONAL, INC., a Delaware
Corporation, and DEVILLIER DONEGAN
ENTERPRISES, L.P., a Delaware limited
Liability partnership,

Defendant.

ORDER

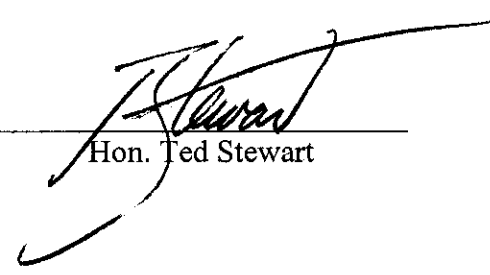
Case No. 2:06CV00206

Honorable Ted Stewart

Defendant Devillier Donegan Enterprises, L.P., having moved this Court for an order granting it an additional period of time from September 19, 2006 to October 19, 2006, to answer or otherwise respond to the Amended Complaint, and

Based on the attached Ex Parte Motion, and for good cause shown, the motion is granted and defendant Devillier Donegan Enterprises, L.P. is granted an additional period of time from September 19, 2006 to October 19, 2006, to answer or otherwise respond to the Amended Complaint.

Dated: September 19, 2006


Hon. Ted Stewart

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DALE STEVENS,

Plaintiff,

vs.

CLARK A. McCELLEN,

Defendant.

ORDER ADOPTING REPORT AND
RECOMMENDATION

Civil No. 2:06 CV 215

CLARK A. McCELLEN,

Counterclaim Plaintiff,

vs.

DALE STEVENS; ORDER OF THE WHITE
LIGHT, a Utah Corporation dba WESTERN
ARBITRATION COUNCIL;
WAMPANOAG NATION, TRIBE OF
GRAYHEAD, WOLF BAND, an
unincorporated association-in-fact; and JOHN
DOES to be named later,

Counterclaim Defendants.

Plaintiff Dale Stevens filed this action on March 14, 2006. Defendant Clark A. McCellen¹ promptly filed a counterclaim and moved to dismiss Mr. Stevens's claims. On March

¹On the official court docket, the Defendant's last name is spelled "McCellen." But when filing papers with the court, the parties have used the spelling "McClellan." In this order, the

24, 2006, the court referred this case to United States Magistrate Judge Paul M. Warner under 28 U.S.C. § 636(b)(1)(B).

After reviewing all relevant material, Judge Warner recommended that the court dismiss Mr. Stevens's claims for lack of jurisdiction, but allow Mr. McCellen's counterclaim to go forward. The court adopted that recommendation in an order dated June 19, 2006. Mr. Stevens then filed a motion to dismiss Mr. McCellen's counterclaim.

On September 5, 2006, Judge Warner issued a Report and Recommendation on Mr. Stevens's motion to dismiss, recommending that the court deny Mr. Steven's motion.² Mr. Stevens failed to file an objection to Judge Warner's Report and Recommendation within the established time limit.

The court has considered Judge Warner's recommendation and has reviewed the record de novo. Judge Warner concluded that Mr. Stevens and the Wampanoag Nation are not entitled to sovereign immunity. The court agrees. Mr. Stevens has not provided any information that indicates that the Wampanoag Nation is federally recognized Indian tribe and, therefore, neither Mr. Stevens nor the Wampanoag Nation can rely on the doctrine of sovereign immunity to avoid this suit.

Further, the court agrees with Judge Warner's conclusion that Mr. Stevens failed to submit sufficient evidence or argument in support of his position that Order of the White Light and the Western Arbitration Council should be dismissed as defendants. Finally, a review of Mr. McCellen's counterclaim belies Mr. Stevens's suggestion that the counterclaim is frivolous.

Accordingly, the court hereby adopts the United States Magistrate Judge's Report and

court uses the spelling that appears on the docket.

²The report and recommendation issued on September 5, 2006, amended and replaced a previous report and recommendation that had been filed on September 1, 2006.

Recommendation as the order of the court. Therefore, Mr. Stevens's Motion to Dismiss Counterclaim (dkt. # 28) is DENIED and the Amended Report and Recommendation (dkt. #34) is adopted as the order of the court.

SO ORDERED this 20th day of September, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
United States District Judge

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U.S. DISTRICT COURT

2006 SEP 19 P 2:27

PETER STIRBA (Bar No. 3118)
MEB W. ANDERSON (Bar No. 10227)
STIRBA & ASSOCIATES
215 South State Street, Suite 750
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Salt Lake City, UT 84110-0810
Telephone: (801) 364-8300

Attorneys for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

DAN VESEY, *et. al.*,

Plaintiffs,

vs.

BRYAN CUNNINGHAM, *et. al.*,

Defendant.

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*

Judge David Sam

Case No. 2:06cv00314

**STIPULATED ATTORNEYS'
PLANNING MEETING REPORT
AND SCHEDULING ORDER**

1. **ATTORNEYS' MEETING:** Pursuant to Fed. R.Civ.P. 26(f), a meeting was held on September 7, 2006, via telephone.
 - a. The following were in attendance: Edward McBride, Jr. for the Plaintiffs and Meb W. Anderson for the Defendants.
 - b. The parties have discussed the nature and basis of their claims and defenses.
2. **INITIAL DISCLOSURE:** Rule 26 initial disclosures shall be exchanged on or before October 20, 2006.
3. **DISCOVERY PLAN:** The Defendant proposes to the court the following discovery plan:
 - a. Discovery is necessary on the following subjects: Issues of liability and damages.

Discovery will not be conducted in particular phases.

- b. All discovery will be completed no later than July 20, 2007.
- c. Discovery methods shall conform with the applicable rules of civil procedure.
- d. Reports from retained experts under Rule 26(a)(2) will be submitted on:
February 23, 2007 by plaintiffs February 23, 2007 by defendant
- e. Supplementation of discovery under Fed.R.Civ.P 26(e) is due as required by Fed. R. Civ. P. 26.

4. **OTHER ITEMS:**


- a. The Defendant requests a final pretrial conference in November, 2007. - *November 13, 2007*
- b. The cutoff dates for joining additional parties are: *2:00pm*
Plaintiffs: December 1, 2006 Defendant: December 1, 2006
- c. The cutoff dates for amending pleadings are:
Plaintiffs: December 1, 2006 Defendant: December 1, 2006
- d. The cutoff date for filing dispositive or potentially dispositive motions is August 20, 2007.
- e. The potential for settlement according to Defendant is: Unknown
- f. The potential for resolution of this matter through the court's alternative dispute resolution program according to Defendant is
Via arbitration: likely XX unlikely
 cannot be evaluated prior to: *specify date*
Via mediation:: likely XX unlikely
 cannot be evaluated prior to: *specify date*
- g. Final lists of witnesses and exhibits pursuant to Fed.R.Civ.P 26(a)(3) are due thirty (30) days before trial.
- h. The parties should have fifteen (15) days after service of final lists of witnesses and exhibits to list objections under Rule 26(a)(3).
- i. This case should be ready for trial by January, 2008, or thirty (30) days after the Court rules on dispositive motions, whichever is later.

January 15, 2008 - January 21, 2008 8:30am - 1:30pm

j. The estimated length of the trial is 5 day jury trial.

DATED this 14th day of September, 2006.

BY THE COURT:



Honorable David Sam
United States District Court Judge

Approved as to form:

/s Edward McBride¹ 9/11/06
EDWARD McBRIDE Date
Attorney for Plaintiffs

/s Meb W. Anderson 9/7/06
PETER STIRBA Date
MEB W. ANDERSON
Attorneys for Defendants

¹ Original signature on file at Stirba & Associates.

Richard K. Glauser, #4324
Michael W. Wright, #6153
W. Kevin Tanner, #8872
SMITH & GLAUSER, P.C.
A Professional Corporation
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Salt Lake City, Utah 84047
Telephone: (801) 562-5555
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Attorneys for Defendant Auto-Owners

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U.S. DISTRICT COURT

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IN THE UNITED STATES DISTRICT COURT

OCEAN STAR INTERNATIONAL, INC. A)
Utah corporation,)

Plaintiff,)

v.)

AUTO-OWNERS INSURANCE)
COMPANY, a Michigan corporation,)

Defendant.)

**ORDER TO EXTEND TIME TO
RESPOND TO DISCOVERY**

Civil No. 2:06-cv-368

Judge: J. Thomas Greene

BASED ON THE STIPULATION OF Defendant and Plaintiff, by and through their respective counsel the Court hereby Orders that Defendant may have up to and including September 20, 2006, to respond to outstanding discovery requests in this matter.

DATED AND ORDER THIS 19th day of September, 2006


JUDGE J. THOMAS GREENE

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U.S. DISTRICT COURT

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DISTRICT OF UTAH

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JUDGE TENA CAMPBELL

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Timothy B. Smith (8271)
Kara M. Houck (8815)
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Attorneys for Arlington Scientific, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

ARLINGTON SCIENTIFIC, INC., a Texas
corporation,

Plaintiff,

v.

ALERCHEK, INC., a Maine corporation;
WAYNE HENRY, an individual resident of
Maine; and JOHN DOES 1-10,

Defendants.

**] PERMANENT
INJUNCTION**

Case No. 2:06CV00407

Judge Tena Campbell

This matter came before the Court on the Stipulated Motion for Entry of Permanent Injunction (the "Stipulated Motion"). The Court, having reviewed and considered the Stipulated Motion and other pertinent materials submitted by the parties or filed in this matter, being fully advised in the premises and good cause appearing therefor, hereby ORDERS as follows:

1. Plaintiff Arlington Scientific, Inc. ("AST") filed a Complaint on or about May 18, 2006, which sets forth a claim, *inter alias*, for Preliminary and Permanent Injunction against

defendant ALerCHEK, Inc. ("Alerchek"). The Court finds that entry of a Permanent Injunction is supported by the facts and the law, is not adverse to the public interest, and has been stipulated to by the parties.

2. ASI's request for Permanent Injunction is hereby GRANTED.

3. Alerchek and its officers, employees, and representatives, and any and all persons and entities acting in concert with any of them, are permanently enjoined:

- a. from using the Alerchek name in China;
- b. from manufacturing, selling, or otherwise distributing products in China under any registrations Alerchek received from the Chinese State Food and Drug Administration ("SDA") or derivatives thereof (the "Registrations");
- c. from authorizing, or attempting to permit, authorize, or allow Shenyang Cherke Biotechnology Co., Ltd. ("Shenyang"), Morning Tech Ltd. or any entity other than ASI (or ASI's authorized representatives, successors, or assigns) to use the Alerchek name in China or to manufacture, sell or otherwise distribute products under the Registrations;
- d. from assisting, directly or indirectly, any entity other than ASI with respect to the manufacture, sale, or distribution of products under the Registrations or in Alerchek's name;
- e. requiring Alerchek to send notice to the SDA and Shenyang that Alerchek has conveyed all of its rights under the Registrations and to the Alerchek name in China to ASI and notifying such entities that the October 26, 2005 letter Alerchek sent to the SDA is void, invalid, or ineffective; and

f. to otherwise cease and desist from any activity in China that involves the SDA Registrations or use of the Alerchek name.

4. Pursuant to the Agreement for Purchase of SDA Registration (the "Agreement") dated July 22, 2004 entered into between ASI and Alerchek, Alerchek agreed to pay any and all reasonable costs and expenses incurred by ASI in enforcing the Agreement. In the event further proceedings become necessary to enforce this Permanent Injunction, ASI shall be awarded all of its reasonable attorneys' fees and costs incurred in connection therewith.

DATED this 19 day of Sept 2006.

BY THE COURT:

Tena Campbell
Judge Tena Campbell
U.S. District Court Judge

Robert S. Clark (4015)
Timothy B. Smith (8271)
Kara M. Houck (8815)
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Attorneys for Arlington Scientific, Inc.

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SEP 19 2006
OFFICE OF
JUDGE TENA CAMPBELL

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

ARLINGTON SCIENTIFIC, INC., a Texas
corporation,

Plaintiff,

v.

ALERCHEK, INC., a Maine corporation,
WAYNE HENRY, an individual resident of
Maine, and DOES 1-10,

Defendant.

ORDER OF DISMISSAL

Case No. 2:06CV00407

Judge Tena Campbell

Based upon the Stipulated Motion of the parties, the Court being fully advised in the
premises, and good cause appearing therefor,

IT IS HEREBY ORDERED that:

All claims asserted, or that could have been asserted, by or between Arlington Scientific, Inc.,
AlerCHEK, Inc. and Wayne Henry may be dismissed with prejudice and upon the merits, each party
to bear its own costs.

MADE AND ENTERED this 19 day of Sept 2006.

Tena Campbell
Tena Campbell
United States District Judge

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U.S. DISTRICT COURT

2006 SEP 19 A 10: 27

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

JAMES W. PALMER, #6959
Assistant Attorney General
MARK L. SHURTLEFF, #4666
Utah Attorney General
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Salt Lake City, UT 84114-0872
Telephone: (801) 366-0310
Facsimile: (801) 366-0315
Attorneys for State of Utah

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH
CENTRAL DIVISION**

STATE OF UTAH,

Plaintiff,

vs.

**INTELECT TECHNOLOGIES, INC.;
POWER & TELEPHONE SUPPLY
COMPANY; and, INTELLI-SITE,
INC.;**

Defendants.

**ORDER TO DISMISS
INTELECT TECHNOLOGIES, INC.**

Case No. 2:06CV00547 BSJ

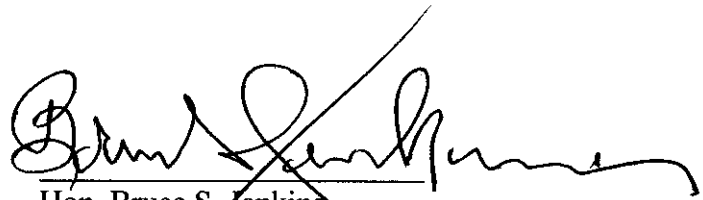
Judge: Bruce S. Jenkins

Based on the Stipulation and Joint Motion of the plaintiff State of Utah and
defendant Intellect Technologies, Inc., pursuant to Rule 41 of the Federal Rules of Civil
Procedure, and for good cause shown;

It is hereby ORDERED that all claims and counterclaims in this matter are hereby dismissed with prejudice, each party to bear their own attorneys' fees and costs.

DATED this 18 day of Sept, 2006.

By the Court:



Hon. Bruce S. Jenkins
Federal District Court Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH CENTRAL DIVISION

ASHLEY D. MOORE, Plaintiff, vs. JO ANNE B. BARNHART, Commissioner of Social Security, Defendant.	SCHEDULING ORDER AND NOTICE OF HEARING Case No. 2:06-CV-618 TS District Judge Ted Stewart
---------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------

In order to facilitate the disposition of this case by the Court,

IT IS ORDERED that, on or before the following dates, the parties shall file and serve briefs complying with the requirements set forth below.

PLAINTIFF: October 30, 2006.

COMMISSIONER: December 4, 2006.

PLAINTIFF'S OPTIONAL REPLY: (if any): January 8, 2007.

If this briefing schedule creates any special hardship a party should make a motion immediately. Extensions of time beyond these generous allowances will require a clear showing of good cause.

FORM OF BRIEFS: Opening and responding briefs shall not exceed fifteen pages exclusive of the statement of facts. Reply briefs shall not exceed ten pages. The text of the briefs, including footnotes, must be in a 12-point font size.

1. Plaintiff's Brief

(a) Statement of the Case

The plaintiff shall briefly outline the course of the proceedings and the disposition at the administrative level and set forth a brief statement of pertinent facts. The statement of facts shall include a summary of the physical and mental impairments upon which the allegation of disability is based, and a brief outline of pertinent factual, medical, and vocational evidence. Each statement of fact shall be supported by citation to the page of the transcript where the evidence may be found. Plaintiff's statement of facts should not exceed eight pages in length.

(b) Statement of Grounds for Reversal or Remand

The plaintiff's brief shall contain a statement of the issues, and an argument in support of each issue asserted. The argument shall identify the findings which the plaintiff contends are not supported by substantial evidence or the legal errors committed by the commissioner with citations to the pertinent transcript pages and pertinent cases, rulings, and regulations.

2. Commissioner's Brief

The Commissioner's brief may include a statement of facts if the Commissioner disagrees with the facts as stated by the plaintiff. The Commissioner's statement of facts shall not exceed eight pages in length. The facts and argument submitted by the Commissioner shall cite to the transcript page containing the evidence upon which the Commissioner relies. The Commissioner shall specifically address each of the arguments

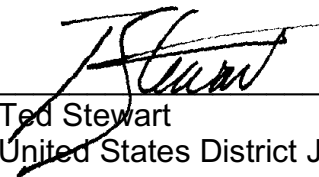
made by the plaintiff in the same order they were raised in the plaintiff's brief. The Commissioner's response shall not address matters not put at issue by the plaintiff.

ORAL ARGUMENT: The Court will have already reviewed the file, pleadings, and administrative record prior to the hearing. The court will hear argument of counsel and intends to rule at the close of the hearing. Hearing is mandatory and the hearing may be moved only upon a showing of good cause. Counsel for the prevailing party may be required to draft a short order reflecting the court's reasons for finding in the party's favor. It is further

ORDERED that hearing is set to begin on January 30, 2007, at 3:00 p.m.

September 19, 2006.

BY THE COURT:



Ted Stewart
United States District Judge

Brent L. Tolman, United States Attorney (#8821),
District of Utah
185 South State Street, Suite 400
Salt Lake City, Utah 84101
(801) 524-5682

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U.S. DISTRICT COURT
2006 SEP 19 P 4:32

DISTRICT OF UTAH

Howard M. Radzely, Solicitor of Labor
Michael A. Stabler, Regional Solicitor
Ann M. Noble, Associate Regional Solicitor
and Special Assistant United States Attorney
Katherine Vigil, Senior Trial Attorney and
Special Assistant United States Attorney
1999 Broadway, Suite 1600
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JUDGE TENA CAMPBELL

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

ELAINE L. CHAO, SECRETARY OF LABOR,)
UNITED STATES DEPARTMENT OF LABOR,)

Plaintiff,)

v.)

PARAGON CONTRACTORS CORP.)
and BRIAN JESSOP, individually, and)
JAMES JESSOP, individually,)

Defendants.)

2:06 CV 700 TC

STIPULATED PRELIMINARY INJUNCTION

Plaintiff having filed her motion, and defendants in lieu of filing an answer, agree to the entry of this Preliminary Injunction without contest;

It is, therefore, upon motion of counsel for the plaintiff, and for cause shown:

ORDERED, ADJUDGED, AND DECREED that defendants, their officers, agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of this Preliminary Injunction be, and each of them hereby are, enjoined and restrained from violating the provisions of sections 12(c) and 15(a)(4) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §§ 212(c) and 215(a)(4)), [hereinafter the "FLSA"], in the following manner:

Defendants shall not, contrary to Sections 12(c) and 15(a)(4) of the FLSA, employ, suffer or permit minors to work in commerce or in the production of goods for commerce, or in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the FLSA under conditions constituting oppressive child labor as defined in § 3(l) of the FLSA 29 U.S.C. § 203(l), and in occupations therein declared to be hazardous as defined in the regulations found at 29 C.F.R. Part 570 (Subparts C and E). In particular, but not limited;

A. Defendants shall not, contrary to the regulation found at 29 C.F.R. § 570.2 employ minors under the age of 14 years to perform any work.

B. Defendants shall not, contrary to the regulation found at 29 C.F.R. § 570.33 employ minors under the age of 16 years to work on construction sites.

C. Defendants shall not, contrary to the regulation found at 29 C.F.R. § 570.65 employ minors under the age of 18 years to operate power circular saws.

D. Defendants shall not, contrary to the regulation found at 29 C.F.R. § 570.67 employ minors under the age of 18 years to work in roofing operations or on or about a roof.

IT IS FURTHER ORDERED that this preliminary injunction shall remain in effect until a trial on plaintiff's complaint seeking a permanent injunction is held by this Court and a decision rendered, or until the matter is resolved by the parties. By agreeing to this preliminary injunction

defendants do not waive any objections that can be raised at a trial on plaintiff's complaint seeking a permanent injunction.

Each party hereby agrees to bear its own costs, fees, and expenses incurred in connection with any stage of this proceeding.

Dated this 19 day of September, 2006.


United States District Judge

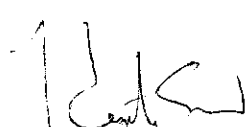
Entry of the foregoing preliminary injunction is hereby consented to:

APPROVED:

Howard M. Radzely
Solicitor of Labor


Michael A. Stabler
Regional Solicitor

Ann M. Noble
Associate Regional Solicitor


Heath H. Snow
Bingham & Snow, LLP
230 North 1680 East
Suite D-1
St. George, Utah 84790

Attorney for Defendants

Dated: 9/12/06


Katherine Vigil
Senior Trial Attorney

U.S. Department of Labor
Office of the Solicitor
1999 Broadway, Suite 1600
Denver, CO 80202

Attorneys for Plaintiff

Dated: Sept. 13, 2006

Colleen Browne, Plaintiff	:	
	:	
	:	
	:	ORDER FOR PRO HAC VICE ADMISSION
v.	:	
	:	
	:	
Medtronic, Inc. and Richard Weinert, Defendant	:	Case Number 2:06cv712

Dated: this 19th day of September, 2006.

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IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

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2006 SEP 19 P 3:17

DISTRICT OF UTAH

JOHN A. CAMPBELL,

Plaintiff,

vs.

CITY OF HACKENSAK, N. J.,

Defendant.

BY: TERESA CAMPBELL

ORDER

Case No. 2:06 CV 748 TC

On September 7, 2006, plaintiff John A. Campbell was ordered to show cause why his complaint should not be dismissed with prejudice for failure to file his complaint within the four-year statute of limitations. On September 14, 2006, Mr. Campbell responded to the order to show cause; however, his response does not address why he did not file his complaint in a timely manner. For the foregoing reason, Mr. Campbell's complaint is dismissed with prejudice.

DATED this 19th day of September, 2006.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JOHN A. CAMPBELL,
Plaintiff,

vs.

S.S. ADMINISTRATION EGG HARBOR,
N.J.,
Defendant.

MEMORANDUM DECISION AND
ORDER DENYING PLAINTIFF'S
MOTION FOR SERVICE OF
PROCESS; DENYING
PLAINTIFF'S MOTION FOR
APPOINTMENT OF AN
ATTORNEY AND DISMISSING
COMPLAINT

Case No. 2:06-CV-764 TS

This matter is before the Court for review of the Complaint. Plaintiff John Campbell (Campbell) is proceeding *pro se* and *in forma pauperis*. He moves for official service of process¹ and to appoint counsel.² Because Campbell was granted permission to proceed

¹Docket No. 5.

²Docket No. 4.

in forma pauperis, the provisions of the *in forma pauperis* statute, § 1915,³ are applicable. Under §1915 the Court shall, at any time, *sua sponte* dismiss the case if the Court determines that the Complaint is frivolous or fails to state a claim upon which relief may be granted.⁴ A claim is frivolous if it “lacks an arguable basis either in law or in fact.”⁵ The Court reviews the Complaint to determine if it is sufficient to state a claim upon which relief can be granted. In construing the Complaint, the Court “presumes all of plaintiff’s factual allegations are true and construes them in the light most favorable to the plaintiff”⁶ and will not dismiss a Complaint for failure to state a claim “unless it appears beyond doubt the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.”⁷ But “conclusory allegations without supporting factual averments are” not sufficient.⁸

Because Campbell proceeds *pro se*, the Court must construe his pleadings liberally and hold his submissions to a less stringent standard than formal pleadings drafted by lawyers.⁹ This means that “if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff’s failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence

³28 U.S.C. § 1915.

⁴28 U.S.C. § 1915(e)(2).

⁵*Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

⁶*Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir. 1991).

⁷*Id.* (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

⁸*Id.* at 1110.

⁹*Id.*

construction, or his unfamiliarity with pleading requirements.”¹⁰ No special legal training is required to recount facts surrounding an alleged injury, and *pro se* litigants must allege sufficient facts, on which a recognized legal claim could be based.¹¹

A *pro se* plaintiff “whose factual allegations are close to stating a claim but are missing some important element that may not have occurred to him, should be allowed to amend his complaint.”¹² Thus, “*pro se* litigants are to be given reasonable opportunity to remedy the defects in their pleadings,”¹³ and the Court should dismiss the claim “only where it is obvious that he cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend.”¹⁴

Construing the Complaint in accord with these principles, the Court finds that it fails to state a claim for relief. Pursuant to § 1983, Campbell brings a claim against the Social Security Administration for violation of his civil rights. He does not specify the constitutional right he claims was violated. Construing the Complaint liberally, it appears that he is alleging that the Social Security Administration is reviewing his case and has referred him to a psychiatrist.¹⁵ He alleges that the Social Security Administration previously raised the same issue in 2005, and at another unspecified time. He alleges that this causes him a

¹⁰*Id.*

¹¹*Id.*

¹²*Id.* (citing *Reynoldson v. Shillinger*, 907 F.2d 124, 126-27 (10th Cir. 1990)).

¹³*Id.* at 1110 n. 3.

¹⁴*Perkins v. Kan. Dept. of Corr.*, 165 F.3d 803, 806 (10th Cir. 1999).

¹⁵Complaint, at 2 and 3.

problem and that the Social Security Administration is bothering him about potentially “cutting off” his check.

In order to state a claim under § 1983 a plaintiff must allege ‘(1) a violation of rights protected by the federal Constitution or created by federal statute or regulation, (2) proximately caused (3) by the conduct of a ‘person’ (4) who acted under color of any statute, ordinance, regulation, custom, or usage, of any State.’¹⁶

In this case, Campbell does not allege the violation of any constitutional right or that a person acted under color of state law. It is not necessary that Campbell accurately cite or even formally identify the constitutional right at issue, so long as his factual allegations can be reasonably read to state a valid claim.¹⁷ Viewing the Complaint liberally, reviewing a social security case and referring a social security claimant to a health care provider for review does not state a claim for a violation of a constitutionally protected right, even if, as Campbell alleges, this was the third such request.

Further, the social security laws and regulations are federal laws. Thus, persons dealing with social security claims are ordinarily acting under federal law. “Such a claim is beyond the scope of Section 1983.”¹⁸ Thus, Campbell fails to state a claim under §1983.

¹⁶*Beedle v. Wilson*, 422 F.3d 1059, 1064 (10th Cir. 2005) (quoting *Summum v. City of Ogden*, 297 F.3d 995, 1000 (10th Cir. 2002)).

¹⁷*Lattimore v. RKK Enters. Inc.*, 91 F.3d 159 (10th Cir. 1996) (citing *Hall*, 935 F.2d at 1110).

¹⁸*Chatman v. Hernandez*, 805 F.2d 453, 455 (1st Cir. 1986) (“Section 1983 applies to persons acting ‘under color of state law’ and not to persons acting pursuant to federal law.”).

Because Campbell's claim appears to be that the Social Security Administration is reviewing his claim, the Court has reviewed the Complaint to determine if it states a *Bivens*-type claim for violation of a constitutional right by a person acting under federal law.¹⁹ As discussed above, the allegations do not state a claim for a violation of constitutional right.

The Court has also reviewed the Complaint to determine if it states a claim for an appeal of a determination by the Social Security Commissioner. The Court finds that it does not. In order for this Court to review any decision by the Social Security Administration, a claimant must show that (1) he has presented that claim to the Social Security Administration; (2) that he has exhausted his administrative remedies; and (3) that there is a final decision by the Social Security Administration.²⁰ Because Plaintiff has failed to allege a colorable constitutional claim,²¹ or an actual decision by the Social Security Administration,²² Campbell has not shown that the exhaustion requirement should be waived.

¹⁹*Bivens v. Six Unknown Named Fed. Narcotics Agents*, 403 U.S. 388 (1971).

²⁰*Mathews v. Eldridge*, 424 U.S. 319 (1976).

²¹*Marshall v. Shalala*, 5 F.3d 453, 454 (finding no error in trial court's denial of request to waive exhaustion requirement where the plaintiff did not show a "colorable constitutional claim that is collateral to . . . substantive claim of entitlement to social security") (citing *Mathews*, 424 U.S. at 330-32).

²²See *McGrath v. Weinberger*, 541 F.2d 249, (10th Cir. 1976) (allowing case to proceed without exhaustion where there was a decision terminating benefits and a colorable constitutional claim).

In other words, if a person thinks that the Social Security Administration has made a wrong decision involving his benefits, he should present that argument directly to the Social Security Administration and then follow all of their procedures for obtaining a final decision on the matter, including any appeals that are available within the social security process.

Plaintiff having failed to state any claim upon which relief can be granted, it is therefore

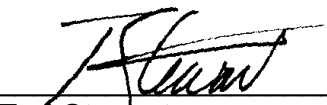
ORDERED that Plaintiff's Motion for Service of Process (Docket No. 5) is DENIED. It is further

ORDERED that Plaintiff's Motion for Appointment of Counsel (Docket No. 4) is DENIED. It is further

ORDERED that pursuant to 28 U.S.C. § 1915, the Complaint is DISMISSED for the failure to state a claim. The clerk of court is directed to close this case.

September 20, 2006.

BY THE COURT:



Ted Stewart
United States District Judge

FILED
U.S. DISTRICT COURT

2006 SEP 20 A 10:39

DISTRICT OF UTAH

BY: DEE BENSON

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

JOHN A. CAMPBELL,

Plaintiff,

vs.

ATLANTIC CITY, NEW JERSEY,

Defendant.

ORDER OF REFERENCE

Civil No. 2:06 CV 776

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(A) and the rules of this Court, the above entitled case is referred to Magistrate Judge Wells. The magistrate judge is directed to hear and determine any nondispositive pretrial matters pending before the Court.

DATED this 19th day of September, 2006.

BY THE COURT:


DEE BENSON
United States District Judge

UNITED STATES DISTRICT COURT

FILED
U.S. DISTRICT COURT

Central

District of

2006 SEP 20 P 2:46
UTAH

DISTRICT OF UTAH

John A. Campbell

Plaintiff

V.

Ancora Mental Hospital

Defendant

**ORDER ON APPLICATION
TO PROCEED WITHOUT
PREPAYMENT OF FEES**

DEPUTY CLERK

CASE NUMBER:

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

☒ GRANTED.

☒ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

☐ DENIED, for the following reasons:

ENTER this 20th day of September, 2006.

s/David Nuffer

Signature of Judge

Magistrate Judge David Nuffer

Name and Title of Judge

UNITED STATES DISTRICT COURT

Central Division

District of

UTAH

John A. Campbell

Plaintiff

V.

Ancora Mental Insitution

Defendant

ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES

CASE NUMBER:

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

☒ GRANTED.

☒ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

☐ DENIED, for the following reasons:

ENTER this 20th day of September, 2006.

s/David Nuffer

Signature of Judge

Magistrate Judge David Nuffer

Name and Title of Judge

UNITED STATES DISTRICT COURT

Central

District of

2006 SEP 20 03:51

David R. Hittle

Plaintiff

V.

State of Utah

Defendant

ORDER ON APPLICATION
TO PROCEED WITHOUT
PREPAYMENT OF FEES

Judge Dale A. Kimball

DECK TYPE: Civil

DATE STAMP: 09/20/2006 @ 15:57:34

CASE NUMBER: 2:06CV00800 DAK

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

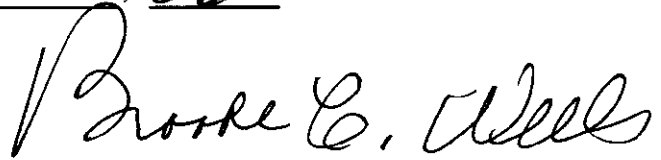
☒ GRANTED.

☒ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

☐ DENIED, for the following reasons:

ENTER this 20 day of Sept. 2006.


Signature of Judge

Magistrate Judge Brooke C. Wells
Name and Title of Judge

IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF UTAH

CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

V.

DAN C. SIMONS et al.,

Defendants.

Case No. 92cv1071DB

ORDER EXTENDING TIME TO RESPOND

Upon motion of plaintiff United States of America, and for good cause shown, it is hereby ORDERED that the United States shall have twenty days after defendants' memorandum in excess of ten pages is accepted for filing or defendants file a memorandum in compliance with DUCivR 7.1(e), to file a response to defendants' motion to vacate.

DATED this 19th day of September, 2006.

BY THE COURT:

Dee Benson

UNITED STATES DISTRICT JUDGE

Kyle W. Jones 1744
Attorney for Plaintiff
Beneficial Life Tower, Suite 1200
36 South State Street
Salt Lake City, Utah 84111
Telephone: (801) 359-7771

RECEIVED
SEP 15 2006
FILED
U.S. DISTRICT COURT
OFFICE OF
JUDGE TENA CAMPBELL
2006 SEP 19 P 4 32
DISTRICT OF UTAH

RECEIVED CLERK
SEP 15 2006
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

JUAN M. GARCIA Q and
ISABEL VICTORINA
MIGLIORE RAYO de GARCIA
Plaintiff(s),

vs.

JERIL D. WINGET and
CENTRE MANAGEMENT, INC.,
Defendant(s).

ORDER

Civil No. 2:99CV0362C
Judge: Tena Campbell

Based upon the stipulation of the parties and the affidavit of the attorney for the
plaintiffs and good cause appearing therefore;

IT IS HEREBY ORDERED THAT:

1. The above matter is as it relates to the fraud claims are reinstated and this
matter is placed back on the active calendar. A scheduling conference shall be set by the
court.

BY THE COURT:
DATED:

Tena Campbell
District Judge

9-19-2006

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION

FILED
U.S. DISTRICT COURT
2006 SEP 20 A 10:40

WESLEY WHITE, et al.,

Plaintiffs,

vs.

WEST STAR AVIATION, INC., et al.,

Defendants.

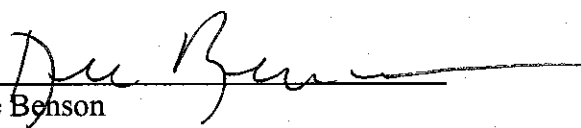
ORDER

Case No.: 2:99-CV-896 DB

The parties having concluded a settlement agreement, the case is dismissed with prejudice.

IT IS SO ORDERED.

DATED this 19th day of September, 2006.


Dee Benson
United States District Judge